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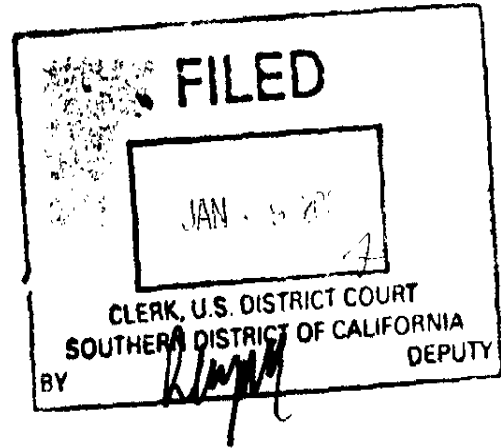
3:02-CV-00056 BROWER V. MOTOROLA INC

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NTCREM.

ORIGINAL

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 8 Attorneys for Defendant Motorola, Inc.



8 UNITED STATES DISTRICT COURT
 9 SOUTHERN DISTRICT OF CALIFORNIA

10 GIBB BROWER and KIM BROWER,

11 Plaintiffs,

12 vs.

13 MOTOROLA, INC., a Delaware corporation;
 14 U.S. WEST WIRELESS, LLC, a Colorado
 15 Corporation; U.S. WEST
 16 COMMUNICATIONS, INC., a Colorado
 17 corporation; VERIZON COMMUNICATIONS,
 18 INC., a New York corporation; GTE
 19 MOBILNET OF SAN DIEGO
 20 INCORPORATED, a Delaware corporation;
 21 GTE WIRELESS SAN DIEGO LLC, a
 22 California Limited Liability corporation; SONY
 23 ELECTRONICS INC., a Delaware corporation;
 24 CELLULAR TELECOMMUNICATIONS AND
 25 INTERNET ASSOCIATION, a District of
 26 Columbia corporation; CELLULAR
 27 CARRIERS ASSOCIATION OF CALIFORNIA,
 28 a California corporation and DOES 1 through
 100, inclusive,

Defendants.

Case 02 CV 0056 K (JFS)

NOTICE OF REMOVAL OF ACTION
 UNDER 28 U.S.C. § 1441(b)

(Federal Question)

24 NOTICE OF REMOVAL

25 COMES NOW defendant Motorola, Inc. ("Motorola") and respectfully notifies the Court
 26 pursuant to 28 U.S.C. section 1441 that it has this day removed this action from the Superior Court
 27 of California, County of San Diego to this Court. In support of its removal, Motorola states as
 28 follows:

Case No. _____

1. Plaintiffs' First Amended Complaint adds class action allegations that parallel those asserted in other class actions that have been removed to federal court and consolidated by the Judicial Panel on Multidistrict Litigation ("JPML") in the United States District Court for the District of Maryland as *In re Wireless Telephone Radio Frequency Emissions Products Liability Litigation*, MDL No. 1421.¹ The class action allegations newly added by the plaintiffs in this case are closely similar to the allegations in the consolidated class actions, which the JPML described as "allegations that defendants misrepresented and concealed alleged adverse health risks of wireless telephone use that could be eliminated by use of a telephone headset." JPML Order at 2. The class action allegations essentially attack the adequacy of federal standards for regulating RF emissions from wireless telephones.² As to the relief requested, plaintiffs, *inter alia*, now seek an injunction prohibiting any of the defendants from stating publicly that the Federal Communications Commission's (the "FCC") FCC's RF emissions regulations have any validity or that either the FCC or the Food and Drug Administration ("FDA") has found that wireless telephones are safe for human use.

2. Accordingly, this action is now removable to federal court pursuant to 28 U.S.C. section 1441 because the First Amended Complaint could have been filed originally in this Court pursuant to the federal question jurisdiction conferred by 28 U.S.C. section 1331. To the extent that the First Amended Complaint reiterates claims of personal injury made in the original complaint, as opposed to the class action allegations first made in the amended complaint, this Court has supplemental jurisdiction over such personal injury claims pursuant to 28 U.S.C. section 1367.

PROCEDURAL BACKGROUND

3. The named plaintiffs, Gibb Brower and Kim Brower, filed the original complaint on April 19, 2001, in the Superior Court of the State of California, County of San Diego, entitled *Gibb Brower and Kim Brower v. Motorola, Inc., et al.*, Case No. 765987.

¹The JPML entered an order transferring and consolidating the Radio Frequency ("RF") emissions cases on October 31, 2001. See Transfer Order (JPML Oct. 31, 2001) attached hereto as Exhibit A.

²Simultaneously with the filing of this removal notice, the defendants have notified the JPML that this case is a “tag-along action” within the meaning of JPML Rule 1.1. See Tag-Along Notice attached as Exhibit B.

1 4. On May 21, 2001, the defendants removed the original action to federal court based
2 on diversity jurisdiction and federal question jurisdiction pursuant to 28 U.S.C. sections 1331,
3 1332(a), 1441 and 1446. That notice was timely filed.

4 5. On August 1, 2001, the plaintiffs filed a motion for leave to file a First Amended
5 Complaint to add a non-diverse party. On September 7, 2001, the court granted plaintiffs' leave to
6 add a non-diverse party and ordered the parties to show cause why the case should not be remanded.
7 The parties stipulated to remand, and on October 22, 2001, the Stipulation and Order Remanding the
8 Case to San Diego Superior Court was entered.

9 6. On December 10, 2001, plaintiffs filed their First Amended Complaint ("Compl.")
10 attached hereto as Exhibit "C," pp. 15-62. In the First Amended Complaint, plaintiffs now purport
11 to represent a class consisting of all persons who purchased portable handheld cellular telephones
12 in the State of California since August 8, 1994. In addition, the plaintiffs have added a number of
13 new defendants, and raised substantial questions of federal law, as further discussed below. Because
14 the First Amended Complaint provides substantial legal grounds for removing this action that were
15 previously unavailable, removal is permitted under 28 U.S.C. section 1446(b) notwithstanding the
16 prior remand of this action.

17 18 **NEW ALLEGATIONS CHALLENGING FEDERAL REGULATION**

19
20 7. As indicated, above, in their First Amended Complaint, plaintiffs, on behalf of a
21 newly proposed class of cellular telephone users, allege, *inter alia*, that the federal regulations
22 governing RF emissions from wireless telephones are invalid and accuse the defendants of
23 obstructing, preventing and undermining the setting of accurate standards by the FCC.

24 8. In the Telecommunications Act of 1996, Congress directed the FCC to complete its
25 rule-making regarding RF emissions from wireless telephones. *See* 42 U.S.C. § 4321 *et seq.* The
26 FCC complied with this directive, and on August 1, 1996, issued Release No. 96-326, 11 FCC Rcd.
27 15123, 1996 FCC LEXIS 4081 (the "First FCC Order"). The First FCC Order set RF emissions
28 guidelines for personal wireless services facilities, including wireless telephones, stating that "*these*

1 *guidelines represent a consensus view of the federal agencies responsible for matters relating to*
 2 *the public safety and health.*” First FCC Order ¶ 2, 168. Having reached this federal consensus,
 3 the FCC expressed the unequivocal view that “*no further state or local regulation is warranted.*”
 4 *Id.* The FCC RF Emission Guidelines were updated and amended one year later, on August 25,
 5 1997, by Release No. 97-303 (the “FCC Second Order”).

6 9. One of the federal agencies vested with both “jurisdiction by law” and by “special
 7 expertise” with respect to the health effects of RF emissions, the FDA, recently described its role in
 8 RF emissions regulation:

9 FDA shares regulatory responsibilities for wireless phones with the Federal
 10 Communications Commission (FCC). All phones that are sold in the United
 11 States must comply with FCC safety guidelines that limit RF exposure. FCC
 relies on FDA and other health agencies for safety questions about wireless
 phones.

12 U.S. Food and Drug Administration – Center for Devices and Radiological Health, Consumer
 13 Update on Wireless Phones, ¶ 2, www.fda.gov/cdrh/ocd/mobilphone.html (July 18, 2001) (the “July
 14 2001 Update”). In addition to participating in the development of the FCC RF emissions
 15 requirements, the FDA has issued four “consumer updates” – the latest in July 2001 – concerning
 16 the results of its statutorily mandated evaluation of RF emissions from wireless telephones. In each
 17 update, the FDA has concluded that “[t]he available scientific evidence does not show that any health
 18 problems are associated with using wireless phones” and that no additional regulatory action is
 19 warranted. FDA Talk Paper No. 793, Update on Cellular Phones at 3 (Feb. 4, 1993); FDA, Center
 20 for Devices and Radiological Health, Consumer Update on Mobile Phones at 3, (Oct. 20, 1999); 66
 21 Fed. Reg. 19,507 (April 26, 2001).

22 10. Yet plaintiffs now ask this Court to invalidate the standards established by the FCC
 23 and the FDA, as well as the testing and licensing provisions related to these standards. Indeed,
 24 plaintiffs seek damages in an amount sufficient to fund independent studies so that they may, among
 25 other things, develop their own specific absorption rate (“SAR”) formula. (Compl. at ¶62 and ¶1
 26 of Prayer for Relief).

27 11. Moreover, plaintiffs further challenge the validity of the federal standards and
 28 regulations by characterizing them as products of defendants’ purported attempts to defraud the FCC

1 and the FDA and interfere with the federal regulatory process. Plaintiffs also claim that defendants
 2 have failed to abide by the standards they allegedly persuaded the government to adopt and that
 3 defendants have further defrauded the federal agencies and the public by concealing that failure.
 4 These claims include allegations that defendants:

- 5
- 6 ● ANSI and IEEE “neglected their duty of care in setting the SAR standard” in many
 7 ways, including using allegedly inadequate procedures to develop the SAR standard
 8 (Compl. at ¶ 30-31);
- 9 ● conspired to exempt cellular telephones from compliance with the safety standards
 10 promulgated by ANSI/IEEE, including the SAR standard, because they did not
 11 meet the standards (Compl. at ¶ 32);
- 12 ● used allegedly inadequate testing methods to prove compliance with the FCC SAR
 13 standard adopted in 1996 (Compl. at ¶ 33);
- 14 ● introduced wireless telephones “into the market without any prior oversight from
 15 any governmental agency and without environmental or testing for adverse health
 16 consequences from electric fields, magnetic fields and electromagnetic fields
 17 generated by this equipment and its battery (Compl. at ¶ 42);
- 18 ● “manipulated the research and pressured members of the ANSI Safety Standard
 19 Committee to exempt portable cellular telephones from regulation and compliance”
 20 with the standards (Compl. at ¶ 42b);
- 21 ● knew about the problems with the SAR testing and still reported the SAR values
 22 “which [were] below the actual values and that such actual values exceed the SAR
 23 limits” (Compl. at ¶ 47);
- 24 ● failed to inform the plaintiffs that the ANSI standards for RF radiation are
 25 inadequate to assure that cellular telephones are safe for use (Compl. at ¶ 54a);
- 26 ● intentionally misrepresented to the public that the FCC’s SAR standard is “true and
 27 accurate,” based on the consideration of all evidence, scientific and otherwise and
 28 on the “average physical structure of all potential users, including children, and
 were designed to measure all” types of radiation emitted from wireless telephones
 (Compl. at ¶ 82a);
- intentionally misrepresented to the public that “governments and all scientists from
 around the world have found that [wireless telephones] are totally ‘safe’ and pose
 no risk of harm whatsoever to the user” (Compl. at ¶ 82d);

- 1 ● failed to consider relevant information when setting the SAR standard (Compl. at
2 ¶ 103a);
- 3 ● conspired to block the adoption of a safety standard until a standard which cellular
4 telephones could meet was proposed (Compl. at ¶ 116);
- 5 ● conspired to develop testing methods that are prone to error and easy to manipulate
6 (Compl. at ¶ 117); and
- 7 ● conspired to lobby, pressure, deceive and mislead various governmental agencies
8 “(including hiring away government employees) to prevent inquiry into the risk of
9 harm to the health of the user” (Compl. at ¶ 120).

10 12. These and other allegations throughout plaintiffs’ First Amended Complaint
11 demonstrate that this action is now undeniably federal in character. Plaintiffs seek, through state law
12 claims, to attack directly and to supplant the existing federal regulations that govern the standards
13 and testing methods for RF emissions from wireless telephones. Although pleaded as state-law
14 claims, plaintiffs’ allegations not only invite, but compel the Court to revisit the FCC’s existing
15 regulations and licensing requirements governing RF emissions. Thus, while plaintiffs purport to
16 assert only state-law causes of action, their First Amended Complaint makes clear that adjudication
17 of the elements of those causes of action will require this Court to resolve substantial disputed
18 questions of federal law.

19 13. It is well established that even in cases where the causes of action asserted by a
20 plaintiff are couched exclusively in state law terms, federal-question jurisdiction exists if resolution
21 of those state-law causes of action depends on resolution of substantial predicate questions of federal
22 law. *See Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180 (1921); *Gully v. First Nat’l Bank*, 299
23 U.S. 109 (1936); *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1 (1983).
24 As the Supreme Court explained in *Franchise Tax Board*, “it is an independent corollary of the well
25 pleaded complaint rule that a plaintiff may not defeat removal by omitting to plead necessary federal
26 questions in a complaint.” *Franchise Tax Board*, 463 U.S. at 22, *see also Bright v. Bechtel*
27 *Petroleum, Inc.*, 780 F.2d 766 (9th Cir. 1986).

1 14. Numerous district courts recently have recognized federal-question jurisdiction over
 2 actions that allege solely state-law causes of action. *See, e.g., Bell v. Illinois Central Railroad Co.*,
 3 No. 01-C-2384, 2001 U.S. Dist. LEXIS 8686 (N.D. Ill. June 27, 2001) (denying motion to remand
 4 and dismissing claims of defective design asserted against locomotive manufacturer because federal
 5 government had comprehensively regulated the areas of locomotive design, manufacture, and
 6 inspection through the Locomotive Inspection Act, leaving no room for state regulation; the court
 7 found that a complaint touching on such a comprehensively regulated area is "necessarily federal in
 8 character"); *Drawho, n v. Qwest Communications Int'l, Inc.*, 121 F. Supp. 2d 554 (E.D. Tex. 2000)
 9 (denying remand motion because plaintiffs' state-law claims for trespass and slander of title
 10 necessitated resolution of questions under Federal Right of Way Act of 1875 and Pacific Railroad
 11 Act); *Frayler v. New York Stock Exchange, Inc.*, 118 F. Supp. 2d 448 (S.D.N.Y. 2000) (denying
 12 remand motion because plaintiffs' state-law claims for injurious falsehood, fraudulent deceit, and
 13 negligent misrepresentation necessitated resolution of question under Securities Exchange Act);
 14 *Lowe v. NASD Regulation, Inc.*, No. 99-1751, 1999 U.S. Dist. LEXIS 19489, *9-10 (D.C.D.C. Dec.
 15 14, 1999) (denying remand motion because plaintiffs' claims sought enforcement of duty imposed
 16 by federal law, thus requiring resolution of substantial questions of federal law); *Regents of the*
 17 *University of Minnesota v. Glaxo Wellcome, Inc.*, 58 F. Supp. 2d 1036 (D. Minn. 1999) (denying
 18 remand motion because plaintiffs' state-law claim for declaratory relief necessitated resolution of
 19 federal patent question); *Aetna/US Healthcare, Inc. v. Hoechst A.G.*, 1999 U.S. Dist. LEXIS 12952
 20 (D. Minn. March 25, 1999) (to same effect).

21 15. Of the four federal Courts of Appeals that have addressed federal question removal
 22 jurisdiction under the Communications Act, three have found that claims similar to plaintiffs' here
 23 are subject to removal on federal question grounds. *See Marcus v. AT&T Corp.*, 138 F.3d 46, 55-56
 24 (2d Cir. 1998) (affirming district court's assertion of federal question removal jurisdiction under
 25 "substantial federal question" doctrine); *Bastien v. AT&T Wireless Services, Inc.*, 205 F.3d 983, 986-
 26 87 (7th Cir. 2000) (affirming district court's assertion of federal question removal jurisdiction under
 27 "complete preemption" doctrine); *In re Long Distance Telecommunications Litigation*, 831 F.2d 627
 28 (6th Cir. 1987) (multi-districted class action claims attacking billing initiation practices by wireline

1 carriers preempted by Communications Act and removable on federal question grounds). District
 2 courts in other circuits have also approved federal question removal under the Communications Act
 3 on a variety of doctrinal grounds. *See, e.g., In Re Comcast Cellular Telecommunications Litigation*,
 4 949 F. Supp. 1193, 1204 (E.D. Pa. 1996).

5 16. Accordingly, as the above cases demonstrate, adjudication of the claims set forth in
 6 plaintiffs' new First Amended Complaint will require this Court to review and rule on the validity
 7 of federal standards and regulations, thereby invoking federal question jurisdiction.

8 17. This Notice is filed within 30 days of the date on which the first defendant received
 9 a copy of plaintiffs' First Amended Complaint. This removal therefore is timely under 28 U.S.C.
 10 section 1446(b). *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

11 18. Pursuant to 28 U.S.C. section 1446(a), Motorola has attached true and correct copies
 12 of all process, pleadings, and orders in Exhibit "C" served upon defendants as of the date of this
 13 Notice.

14 19. As required by 28 U.S.C. section 1446(d), Motorola will promptly serve upon
 15 plaintiffs' counsel and file with the Superior Court of California, County of San Diego a true and
 16 correct copy of this Notice.

17 20. All properly joined defendants consent to, expressly authorize, and join in the removal
 18 of this suit. *See Consents to Removal attached as Exhibit "D."*³

19 WHEREFORE, defendants respectfully remove this action from the Superior Court of
 20 California, County of San Diego to this Court pursuant to 28 U.S.C. section 1441.
 21

22
 23 WRIGHT & L'ESTRANGE
 24 Counsel for Motorola, Inc.

25 Date: January 9, 2002

26 By: 

27 Robert C. Wright

28 ³Motorola and all other defendants reserve all defenses, objections, exceptions, and motions that each of them
 assert in response to plaintiffs' complaint.

EXHIBITS
Notice of Removal

| | | |
|-----------|--|----|
| Exhibit A | Transfer Order dated October 31, 2001 | 1 |
| Exhibit B | Judicial Panel on Multidistrict Litigation Tag Along Notice dated January 9, 2002 | 6 |
| Exhibit C | First Amended Complaint, processed pleadings and orders | 15 |
| Exhibit D | Consents to Remove by Defendants | 88 |

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

CHAIRMAN:
Judge Wm. Terrell Hodges
United States District Court
Middle District of Florida

MEMBERS:
Judge John F. Keenan
United States District Court
Southern District of New York

Judge Morey L. Sear
United States District Court
Eastern District of Louisiana

Judge Bruce M. Selya
United States Court of Appeals
First Circuit

Judge Julia Smith Gibbons
United States District Court
Western District of Tennessee

Judge D. Lowell Jensen
United States District Court
Northern District of California

Judge J. Frederick Motz
United States District Court
District of Maryland

DIRECT REPLY TO:

Michael J. Beck
Clerk of the Panel
One Columbus Circle, NE
Thurgood Marshall Federal
Judiciary Building
Room G-255, North Lobby
Washington, D.C. 20002

Telephone: [202] 502-2800
Fax: [202] 502-2888

<http://www.jpml.uscourts.gov>

October 31, 2001

TO INVOLVED COUNSEL

Re: MDL-1421 -- In re Wireless Telephone Radio Frequency Emissions Products Liability Litigation

(See Attached Schedule A of Order)

Dear Counsel:

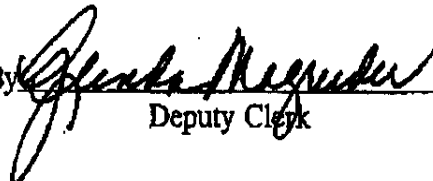
I am enclosing a copy of a Panel order filed today in the above-referenced matter.

The Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425 (2001), and specifically, Rules 1.1, 7.4 and 7.5, refer to "tag-along" actions. Please familiarize yourself with these Rules for your future reference. With regard to Rule 7.5, you need only provide this office with a copy of the complaint which you feel qualifies as a "tag-along" action and informally request that our "tag-along" procedures be utilized in transferring the action to the transferee district. If you have any questions regarding procedures used by the Panel, please telephone this office.

Very truly,

Michael J. Beck
Clerk of the Panel

By


Deputy Clerk

Enclosure

RECEIVED
NOV 2 2001

FIDINGS & ROSENBERG LLP

JPML Form 35

OCT 31 2001

FILED
CLERK'S OFFICE

RELEASED FOR PUBLICATION

DOCKET NO. 1421

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

**IN RE WIRELESS TELEPHONE RADIO FREQUENCY EMISSIONS
PRODUCTS LIABILITY LITIGATION**

**BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, MOREY
L. SEAR, BRUCE M. SELYA, JULIA SMITH GIBBONS, D. LOWELL JENSEN
AND J. FREDERICK MOTZ, JUDGES OF THE PANEL**

TRANSFER ORDER

This litigation presently consists of four actions: one action each in the Eastern District of Louisiana, the District of Maryland, the Southern District of New York and the Eastern District of Pennsylvania. Before the Panel is a motion by certain telecommunications defendants,¹ pursuant to 28 U.S.C. § 1407, to centralize the actions in either the District of Maryland, Eastern District of Louisiana or Eastern District of Pennsylvania for coordinated or consolidated pretrial proceedings.² Several defendants³ join in this motion. All plaintiffs oppose Section 1407 centralization.

At the hearing it was announced that four of the seven Panel members hold stock interests that would normally disqualify them under 28 U.S.C. § 455 from participating in the decision of this matter regardless of the insignificance of the financial impact any determination would likely have upon those interests. The statute, 28 U.S.C. § 1407(d), prescribes that "[t]he concurrence of four members shall be necessary to any action by the panel," and no provision is made for the appointment or assignment of substitute panelists in the event of disqualifications. The Panel thus differs from most courts in which other judges are available to replace any members of the court who are disqualified in a particular matter under § 455. In this proceeding, therefore, the Panel would be rendered incapable of discharging its

¹ Verizon Communications, Inc., Motorola Corporation, Cingular Wireless LLC, Sprint Corporation, and Philips Corporation.

² The Panel has been notified that a related action is pending in the Northern District of Georgia. This action and any other newly filed actions that come to the Panel's attention will be treated as potential tag-along actions. See Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

³ AT&T Corp., Audiovox Communications Corp., Baltimore Business Communications, Inc., Bell South Mobility, Bell South Mobility LLC, Cellco Partnership, Cellular One Group, Cingular Wireless, Motorola, Inc., NEC America Inc., Nokia Mobil Phones, Inc., Nokia, Inc., Philips Electronic North America Corp., Samsung Electronics, SANYO North America Corporation, SBC Telcom Inc., Sprint PCS Limited Partnership, Sprint Spectrum LLP d/b/a Sprint PCR, Verizon Maryland, Inc., and Verizon Wireless.

- 2 -

unquestioned statutory jurisdiction and responsibility but for the "rule of necessity" – that is, the well established concept that a judge is duty bound to perform his or her jurisdictional authority even in the face of a statutory disqualification if recusal would result in the lack of a forum in which the issue can be adjudicated. In *United States v. Will*, 449 U.S. 200, 217, 101 S.Ct. 471, 481 (1980), the Court not only recognized the viability of the "rule of necessity" in the federal courts in general, it also held more specifically that § 455 does not negate the application of the rule when invoked to preserve a forum for decision. The Court said:

The congressional purpose so clearly expressed in the Reports gives no hint of altering the ancient Rule of Necessity, a doctrine that had not been questioned under prior judicial disqualification statutes. The declared purpose of § 455 is to guarantee litigants a fair forum in which they can pursue their claims. Far from promoting this purpose, failure to apply the Rule of Necessity would have a contrary effect, for without the Rule, some litigants would be denied their right to a forum. The availability of a forum becomes especially important in these cases.

As ruled at the hearing, therefore, all of the members of the Panel participated in the decision of this matter under the "rule of necessity" in order to provide the forum created by the statute, 28 U.S.C. § 1407.⁴

On the basis of the papers filed and hearing session held, the Panel finds that the actions in this litigation involve common questions of fact arising out of allegations that defendants misrepresented and concealed alleged adverse health risks of wireless telephone use that could be eliminated by use of a telephone headset. Centralization under Section 1407 in the District of Maryland will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation, while accordingly being necessary in order to avoid duplication of discovery, prevent inconsistent pretrial rulings and conserve the resources of the parties, their counsel and the judiciary.

In light of the geographic dispersal of the parties involved in this docket, no federal district stands out as the focal point for this litigation. We are persuaded that the District of Maryland is the most appropriate transferee forum for this litigation. We note that an action is pending there before Judge Catherine C. Blake, who already has relevant experience with some issues likely involved in this litigation.

⁴ The Panel recognizes that the addition of any one of the four disqualified members would be sufficient to provide a quorum, but would not necessarily provide the required "concurrence of four members" in order to reach a decision. Application of the rule of necessity therefore required that all of the members who would otherwise be disqualified by § 455 participate in the hearing and the decision. In any event, the possibility of applying other procedural approaches was rendered moot because the decision of the Panel on the merits was unanimous.

- 3 -

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on the attached Schedule A and pending outside the District of Maryland are transferred to the District of Maryland and, with the consent of that court, assigned to the Honorable Catherine C. Blake for coordinated or consolidated pretrial proceedings with the action pending there.

FOR THE PANEL:



Wm. Terrell Hodges
Chairman

SCHEDULE A

MDL-1421— In re Wireless Telephone Radio Frequency Emissions Products Liability Litigation

Eastern District of Louisiana

Garrett J. Naquin, et al. v. Nokia Mobile Phones, Inc., et al., C.A. No. 2:00-2023

District of Maryland

J. Douglas Pinney, M.D., et al. v. Nokia Inc., et al., C.A. No. 1:01-1456

Southern District of New York

Crystal Gilliam, et al. v. Nokia Inc., et al., C.A. No. 1:01-4275

Eastern District of Pennsylvania

Francis J. Farina v. Nokia Inc., et al., C.A. No. 2:01-2477

0

4

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

IN RE WIRELESS TELEPHONE RADIO
FREQUENCY EMISSIONS PRODUCTS
LIABILITY LITIGATION

)
)
)
)
)
MDL Docket No. 1421

DEFENDANTS' SECOND NOTICE OF RELATED ACTIONS

Pursuant to R.P.J.P.M.L. 7.5(e), the undersigned hereby notifies the Panel of a tag-along action, *Brower v. Motorola, Inc., et al.*, pending in the United States District Court for the Southern District of California. A copy of the operative complaint is attached at Tab A.

Brower originally was filed by a husband and wife seeking to recover damages for personal injuries, including a brain tumor, allegedly caused by Mr. Brower's use of wireless telephones. The action initially was removed to federal court based largely on diversity jurisdiction pursuant to 28 U.S.C. §§ 1332(a) and 1441. After permitting plaintiffs to add a new defendant that destroyed diversity of citizenship, the district court remanded the action. On December 10, 2001, however, plaintiffs filed an amended complaint that for the first time asserts claims on behalf of a purported class (consisting of all California wireless telephone purchasers), and adds a series of claims premised on the alleged insufficiency of federal wireless telecommunications laws and regulations. These amendments provide a basis for federal

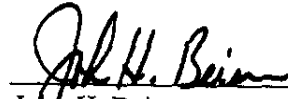
jurisdiction that was not presented by the original personal injury claims and therefore permit removal pursuant to 28 U.S.C. § 1446(b), and also bring this action within the scope of the proceeding created by the Panel in MDL No. 1421..

Like the complaints in the actions previously transferred by the Panel as part of MDL No. 1421, this action now asserts multiple claims ranging from violation of state consumer-protection statutes to fraud to strict liability against numerous members of the wireless telephone industry, all on behalf of a putative class of all wireless telephone users in the relevant state. This action thus now conforms to the other actions in its allegation on behalf of a purported state-wide class “that defendants misrepresented and concealed adverse health risks of wireless telephone use” Transfer Order (JPML Oct. 31, 2001) at 2. The purported class in this action overlaps with the purported nationwide class asserted in *Naquin v. Nokia Mobile Phones, Inc.* (one of the constituent actions in MDL No. 1421) and is parallel to the purported statewide classes asserted in each of the other constituent actions. Transfer and coordination of this action therefore would achieve the efficiencies on which 28 U.S.C. § 1407 is based.

WHEREFORE, on behalf all defendants in *Brower*, the undersigned respectfully requests that the Panel transfer this tag-along action together with those actions as to which transfer and coordination has previously been requested pursuant to 28 U.S.C. § 1407.

Dated: January 9, 2002

Respectfully submitted,



John H. Beisner
MELVENY & MYERS LLP
555 13th Street, N.W.
Suite 500 West
Washington, D.C. 20004-1109
(202) 383-5300

*Counsel for Verizon Communications Inc.,
Cellco Partnership, Verizon Wireless,
Verizon Wireless LLC, Verizon Wireless
Services LLC, Verizon Maryland Inc., and
GTE Wireless, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on the following by regular U.S. mail, postage prepaid, on this 9th day of January, 2002:

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10 Gibb Brower and Kim Brower,
11 Plaintiffs,

Case No.: GIC765987

12 vs.

FIRST AMENDED COMPLAINT

CLASS ACTION

13 Motorola, Inc., a Delaware
corporation; U.S. West Wireless, LLC,
14 a Colorado corporation; U. S. West
Communications, Inc., a Colorado
15 corporation; Verizon Communications,
Inc., a New York corporation; GTE
16 Mobilnet of San Diego Incorporated,
a Delaware corporation; GTE Wireless
17 San Diego LLC, a California Limited
Liability corporation; Sony Electronics
18 Inc., a Delaware corporation; Cellular
Telecommunications and Internet
19 Association, a District of Columbia
corporation, Cellular Carriers
20 Association of California, a California
corporation; and DOES 1 through
21 100, inclusive,

22 Defendants.
23

24 Plaintiffs allege as follows:

- 25 1. Defendants Motorola, Inc. ("Motorola") and Sony Electronics Inc. ("Sony") manufacture
26 portable handheld cellular telephones ("PCT") for use over cellular telephone systems.
27 2. Defendant U.S. West Wireless, LLC, ("U.S. Wireless") was licensed by the Federal
28 Communications Commission ("FCC") to provide cellular telephone service in San Diego County

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1 from August of 1994 up until approximately September of 1995 when it transferred its cellular
2 system to Defendant GTE Mobilnet of San Diego Incorporated. ("GTE Mobilnet").

3 3. GTE Mobilnet thereafter provided cellular telephone service over said system to the public in
4 San Diego, California until September or October, 2000 when its assets were transferred to GTE
5 Wireless of Pacific, Inc.

6 4. Defendants Cellular Telecommunications and Internet Association ("CTIA") and Cellular
7 Carriers Association of California ("CCAC") are trade associations of cellular telephone
8 equipment manufacturers and service providers.

9 5. Defendants American National Standards Institute ("ANSI") and Institute of Electrical and
10 Electronic Engineers Inc. ("IEEE") are engaged in the establishment and setting of safety
11 standards for PCTs.

12 6. Plaintiff Gibb Brower, a.k.a. William G. Brower, purchased a new Motorola PCT from U.S.
13 Wireless on or about August 8, 1994 for use on its cellular system in San Diego, California. He
14 continued to use the same PCT after the transfer of the cellular system to GTE Mobilnet. In
15 approximately March of 1999, Mr. Brower purchased a new PCT manufactured by Sony from
16 GTE Mobilnet which he used over the cellular system until April of 2000. Plaintiff Kim Brower,
17 a.k.a. Kimberly Brower, is the wife of Gibb Brower.

18 7. This Complaint alleges fourteen causes of action:

19 a. Unfair business practices in violation of California Business & Professions Code
20 Section 17200, et seq..

21 b. Deceptive practices in violation of the Consumers Legal Remedies Act (California
22 Civil Code Section 1750, et. seq.).

23 c. Intentional misrepresentation for falsely stating that PCTs are absolutely safe and
24 unconditionally pose no risk of harm to the health of the user and that the PCT standards and
25 test methods are based on complete, true and correct data and full consideration of all relevant
26 information;

27 d. Negligent misrepresentation for failure to tell the public that numerous studies
28 show that PCT use can cause harm to living systems including, but not limited to, genetic

1 damage, change in the ion balance of nerve cells, weakening of myelin sheets of cells, damage
2 to the cells in the brain, interference with the brain's blood barrier, dysfunction of the cellular
3 structure of the brain and may stimulate growth among supportive cells in the nerve system
4 leading to the development of malignant tumor and for failure to disclose that the PCT testing
5 standards were not properly developed and that the PCT testing methods are unreliable;

6 a. Strict liability for the manufacture and selling of PCTs without adequately testing
7 said equipment for safety despite the knowledge that such equipment had latent hazards to
8 health of the user and for failure to implement safeguards to reduce or eliminate the risks of
9 RF and ELF radiation;

10 b. Product liability for failure to warn consumers of the potential health risks
11 associated with the use of PCTs and failure to equip PCTs with the proper and necessary
12 safeguards to protect the user against such health risks;

13 c. Negligence by failing to exercise ordinary care in the standard setting, manufacture,
14 sale, testing, quality assurance, quality control, distribution, advertising, instructions and
15 warnings concerning PCTs;

16 d. Breach of Express Warranty that PCTs were safe for use and posed no risk of harm
17 to users;

18 e. Breach of Implied Warranty that PCTs were fit for their intended purpose and
19 posed no risk of harm to users;

20 f. Conspiracy to suppress, manipulate, conceal, cover-up, distort and discredit
21 research and studies showing a risk of harm to PCT users and to purchase, ghostwrite, create,
22 bribe, and co-opt researchers to reach inconclusive results to be released to the public under
23 the guise that such studies show that PCTs are safe and, to obstruct, prevent and undermine
24 the setting of accurate standards and the adoption of accurate testing procedures;

25 g. Fraud by misleading users of PCTs to believe that such equipment was safe and
26 properly tested in accordance with sound standards;

27 h. Battery by exposing plaintiffs and the class to radiation, to which they did not
28 consent, and which defendants knew, or should have known, posed a risk of harm to their

persons; and

i. Punitive damages for wanton and willful misconduct by acting in a conscious and callous disregard of public safety by concealing the inadequacy of the test standards, the inefficacy of the testing procedures, the possibility that PCTs will result in injury to users and for willful and deliberate failure to avoid such consequences.

JURISDICTION AND VENUE

8. The allegations and claims for relief in this First Amended Complaint arise from acts committed in this state, which violate California's laws.

9. The FCC has not preempted state action in this matter. Furthermore, the FCC affirmatively states that it is not the "expert agency" for evaluating the health effects of PCTs.

10. The U.S. Food and Drug Administration ("FDA") has not preempted state action in this matter. The FDA states that it cannot say that PCTs are safe.

11. Venue is proper in this Court as Plaintiffs entered into contracts, purchased PCTs and used such equipment in San Diego, California and a substantial number of the acts complained of herein took place in San Diego County.

PARTIES

12. Plaintiffs are residents of the City of San Diego, State of California. At all times herein mentioned, Plaintiff Gibb Brower was the owner and operator of a landscape business in San Diego County.

13. Defendant Motorola is a Delaware corporation, headquartered at 1303 E. Algonquin Road, Schaumburg, Illinois and doing business in California.

14. Defendants U.S. Wireless and U.S. West Communications, Inc. ("U.S. West") are a Colorado corporations. U.S. Wireless is an affiliate of and controlled by defendant US West. Plaintiffs are informed and believe and thereon allege that U.S. Wireless has no assets, and if it still exists, is merely a shell corporation.

15. Defendant GTE Mobilnet is a Delaware corporation and was an affiliate of and controlled by defendant GTE Corporation ("GTE"), a New York corporation. Defendant GTE was previously identified herein as "Doe 1." Plaintiffs are informed and believe and thereon allege that in

1 September or October of 2000, all of the assets of GTE Mobilnet were transferred to GTE
2 Wireless of Pacific, Inc. and then to GTE Wireless of San Diego, LLC, which is now a wholly
3 owned subsidiary of AT&T Wireless Services, Inc., a Delaware corporation. This transfer was
4 made in connection with a merger between Bell Atlantic Corporation and GTE Corporation (the
5 "merger"). Under the merger agreement, GTE was to become merged into a newly formed New
6 York corporation, a subsidiary of Bell Atlantic Corporation, a Delaware corporation. Plaintiffs
7 are informed and believe and thereon allege that the newly formed corporation became Verizon
8 Communications, Inc. ("Verizon"). Defendant Verizon was previously identified herein as "Doe
9 2." The merger was subject to the approval of the Department of Justice ("DOJ") and the FCC,
10 who imposed conditions on their consent. As part of a court consent decree, the parties agreed to
11 divest themselves of the cellular telephone system operated by GTE Mobilnet in San Diego.
12 Plaintiffs are informed and believe and thereon allege that GTE Mobilnet was dissolved after
13 receiving the sale proceeds. Plaintiffs are further informed and believe and thereon allege that
14 these proceeds were distributed to GTE and/or Verizon who are liable for the damages caused by
15 their affiliate. Plaintiffs are informed and believe and thereon allege that defendant Verizon
16 Wireless is a joint venture of Verizon and Vodafone AirTouch, Plc. Verizon Wireless is doing
17 business in California. Plaintiffs are uncertain as to the corporate identity of the chain of
18 corporate affiliates which are controlled by Verizon and what, if any, assumptions of liability have
19 been assumed as part of the merger and reorganization and will seek to amend this complaint to
20 set forth such information when it has been ascertained.

21 16. Defendant Sony Electronics Inc. is a Delaware corporation which has its principal place of
22 business at 1 Sony Drive, Park Ridge, New Jersey.

23 17. Defendant CTIA is a trade association incorporated under the laws of the District of
24 Columbia, having its principal place of business at 1250 Connecticut Avenue, N.W., in
25 Washington, D.C. CTIA tests PCTs and certifies such equipment for use with cellular systems.

26 Defendant CCAC is a trade association incorporated under the laws of California, having its
27 principle place of business at 1225 8th Street, Suite 550, Sacramento, California. CCAC was
28 previously identified herein as "Doe 3." CCAC provides a forum for defendants to discuss public

1 policy issues in California and to communicate wireless industry positions to the public.

2 18. Defendant ANSI is a corporation organized and existing under the laws of the District of
3 Columbia, having its principle place of business at 1819 L Street NW, Suite 600, Washington,
4 D.C. 20036. ANSI was previously identified herein as Doe 4. ANSI is a private, non-profit
5 organization made up of businesses, professional societies and trade associations, governmental
6 agencies and standards developers. A primary goal of ANSI is the enhancement of global
7 competitiveness of U.S. Business by promoting voluntary consensus standards. Plaintiffs are
8 informed and believe and thereon allege that many of other defendants' officers and employees
9 are members of ANSI.

10 19. Defendant IEEE is a corporation organized and existing under the laws of the State of New
11 York, having its principle place of business at 3 Park Avenue, Floor 17, New York, New York
12 10016. IEEE was previously identified herein as Doe 5. IEEE is a non-profit, technical
13 professional association of electrical and radio engineers. Plaintiffs are informed and believe and
14 thereon allege that many of the other defendants' officers and employees are members of IEEE.

15 20. The true names and identities of the defendants sued herein under California Code of Civil
16 Procedure § 474 as Does 6 through 100, inclusive, are currently not known to plaintiffs, who
17 therefore sue these defendants by such fictitious names. Plaintiffs will seek to amend this First
18 Amended Complaint and include these Doe defendants' true names and capacities when they are
19 ascertained. Each of the fictitiously named defendants is responsible in some manner for the
20 conduct alleged herein and for the damages suffered by Plaintiffs.

21 21. At all times herein mentioned in the causes of action alleged herein, each and every
22 defendant was an agent and/or general partner of each and every other defendant. In committing
23 the acts complained of herein, each and every defendant acted within the scope of its agency
24 and/or partnership agreement and such action was with the consent, permission, authorization and
25 knowledge of each of the remaining defendants, and perpetrated and/or aided and abetted the
26 violations of law described herein. All actions of each defendant as alleged herein were ratified
27 and approved by every other defendant or their officers, directors, controlling persons, agents,
28 partners, or joint venturers.

FACTUAL BACKGROUND

22. Cellular communications are achieved by transmission of information on airwaves back and forth between the cellular telephone and a nearby cell site. The airwaves used for cellular telephone transmissions are in the 825 - 845 MHz radio frequency ("RF") range. Two modes of transmission are used by cellular systems, analog and digital. In both cases, these airwaves are modulated with an electromagnetic wave representation of the speech information. This modulation often includes extremely low frequency ("ELF") components either from the speech itself in the case of analog transmission or from the encoding scheme in the case of digital transmission and/or the PCT battery. To prevent interference to and from other users of the cellular system, a control unit at the cell site instructs the cellular radio telephones within its range to increase or decrease transmitting power when making and during a call.

23. Cellular telephones were originally installed in automobiles, used external antennas and operated at 3 watts of power. Users of these vehicle mounted cellular telephones were insulated from the electric fields, magnetic fields and electromagnetic fields (sometimes hereinafter called "RF radiation") generated by this equipment by the shell of the automobile and by the distance of the user from the radiating elements. (RF radiation is also commonly called non-ionizing radiation, electromagnetic radiation, RFR (radio frequency radiation), and, EME (electromagnetic energy)).

24. Defendants U.S. Wireless and then GTE Mobilnet and next GTE Wireless were the operators of a cellular system in San Diego County. This system was designed, constructed and installed to serve vehicle mounted 3 watt units. The defendants began manufacturing and marketing PCTs in approximately 1986. Thereafter, some of defendants' cell sites were, from time to time, redesigned to be "portable compatible," however, Plaintiffs are informed and believe and thereon allege that during all times herein relevant, most of the cell sites had not been upgraded. As a result, PCTs using this cellular system were normally operated at or near their maximum power, which fact was not disclosed to the plaintiffs or the public.

25. The cellular telephone market behaves in classic oligopolistic fashion. Generally speaking, all PCTs are purchased directly from cellular telephone companies or through one of their agents.

1 Cellular service and PCTs are sold as a package and in the package, the price of the PCT is fixed
2 below cost in order to discourage any PCT manufacturers from trying to sell directly to
3 consumers. Agents are given a rebate to cover the below cost sale of the PCT. This tying
4 arrangement gives cellular telephone companies, together with CTIA and CCAC, de facto control
5 over the PCT equipment market and the power to accept or reject PCTs that do not meet their
6 desires. This market power was acknowledged in a July 24, 2001, article in the San Diego Union
7 Tribune, a representative of Motorola is quoted as saying PCT manufactures "compete on style,
8 on brand, on their relationship with wireless operators." (Emphasis added). This control over the
9 manufacturing of PCTs is further enforced by CTIA's testing program that grants the
10 manufacturer the right to place CTIA's seal of approval on the approved PCT and PCTs bearing
11 this seal have been and are sold in the state of California. Furthermore, the defendant carriers test
12 PCTs before allowing them to be used on their cellular systems. Thus, at all times herein
13 mentioned, the defendants had sufficient power over the PCT markets to control the addition or
14 absence of safety features, such as radiation shielding.

15 26. The power density of RF radiation from a PCT is approximately 2 billion times greater than
16 occurs naturally in the environment. Because the PCT is used next to the head, the RF radiation
17 penetrates 2 ½ inches or more ("the plume") into the brain of an adult male (and even further in
18 smaller or less developed skulls). Use of a PCT inside of a vehicle increases the level of RF
19 exposure to the occupants because some of the waves are bounced back into the vehicle and
20 metal-framed eyeglasses, metal implants, orthodontic braces and metallic jewelry worn about the
21 head may modify the radiation absorption resulting in "hot spots" of high energy concentration in
22 the brain.

23 27. The cellular transmit frequencies are very absorptive and penetrate deep into the tissue where
24 heating effects occur. Medical equipment used for hyperthermia/diathermy treatments use nearby
25 frequencies (750 MHz and 915 MHz) because they are ideally suited for delivering heat deep into
26 the brain without causing any skin heating. Cellular frequencies are located in the middle of the
27 band between these medical frequencies.

28 28. RF radiation heats the brain cells by exerting torques on the water molecules in the cells and

1 gradually increasing the water molecules' thermal energies through friction like effects. Water
2 molecules have electrically charged ends, one end is positively charged and the other is negatively
3 charged. The water molecules are twisted back and forth very rapidly by RF radiation and as they
4 twist, they rub against one another and friction heats them up. The plaintiffs are informed and
5 believe and thereon allege that the electric field produced by a PCT fluctuates back and forth
6 approximately 2.45 billion times each second. That means that an electrically charged particle will
7 be pulled first one way and then the other, back and forth some 2.45 billion times each second
8 causing the water in the exposed brain cells to become hot..

9 29. Plaintiffs are informed and believe and thereon allege that a temperature rise of as little as
10 0.5C in the sensitive brain tissue can cause tissue destruction, increase in cell membrane
11 permeability, interfere with the function of the immune system and inhibit the function of
12 protective cells and enzymes, all of which increase the vulnerability to illness such as cancer.

13 30. At all times herein mentioned, ANSI and IEEE have held themselves out to the government
14 and to the public as experts in the determination of what levels of heating of the brain cells from
15 RF radiation are "safe" for humans. Using an atypical cadaver of a very large and heavy man, a
16 mathematical model was constructed to determine the amount of heat that could be "safely"
17 absorbed in the brain of the "average" person using a PCT. The resulting formula, called "SAR"
18 (for specific absorption rate), equals the value of energy absorption per unit mass, which the
19 defendants say can be safely absorbed into the brain.. In fact, the cadaver used as a model does
20 not represent the average adult male much less the average adult female, teenager or child.
21 Plaintiffs are informed and believe that the penetration of RF radiation into the brain is much
22 greater in average adult males and much greater in adults with small heads and with teenagers and
23 children who have less developed skulls, than predicted in the model and that this fact was known
24 but entirely ignored by ANSI and IEEE and the defendants.

25 31. ANSI and IEEE neglected their duty of care in setting the SAR standard in a number of
26 important respects, including but not limited to the following: (a) the SAR standard is based on
27 far field measurements of RF radiation even though it is the near field that penetrates into the
28 brain of the PCT user; (b) there is no analogue between the far field and the near field yet no

1 effort was or has been made to measure the power of characteristics of the near field by ANSI or
2 IEEE; ©) it is believed that stored energy accumulates around the antenna of the PCT. Plaintiffs
3 are informed and believe and thereon allege that this stored energy is many magnitudes higher
4 than the far field and penetrates deeply into the brain however, no effort has been made by ANSI
5 or IEEE to identify or measure the power density of this stored energy; and (d) the cadaver used
6 as a model for the SAR calculation does not comport with the size and shape of the average adult
7 male, the average adult female or a child. The use of this flawed data and the inadequacy and
8 deficiencies in the SAR standard are and were well known to the defendants but not to the public.
9 Indeed, on July 13, 2001, in Federal Court, in the case of *Newman v. Motorola, et. al.*, an
10 attorney speaking for all of the defendants in that case conceded to the court that the “ANSI
11 standard is not a scientific study – it’s simply a number.”

12 32. The plaintiffs are informed and believe and thereon allege that the defendants’ knew, both
13 before and after the introduction of PCTs in 1986, that PCTs could not pass the then current SAR
14 safety standards. Thus, the defendants cooked up an excuse, with the compliance of ANSI/IEEE,
15 to exempt PCTs from compliance with these safety standards on the grounds that “the peculiar
16 nature of the electromagnetic energy” in close proximity to the human head prevented radiation
17 from entering the brain and therefore PCTs were classified in the same category as television
18 remote control and garage door openers. Plaintiffs are informed and believe and thereon allege
19 that the defendants knew that these grounds were entirely without foundation and were specious
20 but permitted and promoted this false classification. ANSI/IEEE knew, or should have known,
21 that this exemption and classification was wholly without merit but allowed the defendants to
22 control and emasculate their standard setting process.

23 33. SAR testing of PCTs manufactured after August 1, 1996, was mandated by the FCC who
24 left it to the manufacturers to design the testing methods and self-certify the results. The
25 defendants thereupon created/used a fiberglass mold of the human head (called a “phantom”),
26 which they filled with a liquid or gel mainly composed of sugar water. PCTs were “tested” for
27 compliance with the SAR standard by being placed in the hand of the phantom and set to radiate
28 RF emissions into the sugar water. The levels of heat in the sugar water are measured by probes.

1 The plaintiffs are informed and believe and thereon allege that at all times defendants' knew that
2 the use of this sugar water to replicate the human skin, fat, muscle, bone, CSF and brain for the
3 purpose of measuring the heating effect of RF radiation on humans is a sham and does not truly
4 duplicate the conditions for propagation of the RF radiation in the head. Plaintiffs are further
5 informed and believe and thereon allege that the defendants knew that "hot spots" created by a
6 convergence of such radiation in portions of the brain are not measured by such tests and that
7 such hot spots may be 20 to 30 times hotter than the levels measured in the sugar water.

8 34. In March, 2000, a report from the Directorate General for Research to the European
9 Parliament reviewed the above reports and other evidence and concluded that RF radiation from
10 PCTs constitutes "a major contemporary threat to the health of Society." The report concludes
11 that as a result of PCT use "the brain (the most sensitive organ of the body) is, for the first time in
12 its evolutionary history, being exposed at short range to a source of both pulsed microwaves
13 (from the near-field of the antenna) and more highly penetrative *ELF* magnetic fields (from the
14 battery.)" The author of the report, Dr. G. Hyland, recommended that consumers be warned that
15 the SAR only relates to heating of tissue "and is in *no way* relevant to *non-thermal* effects that the
16 emissions from a mobile phone may have on the user." Dr. Hyland also recommended that
17 consumers be warned that the use of protective devices, such as headsets, "afford no protection
18 against the low frequency pulsed magnetic field from the battery of the phone." The report points
19 out that "*identical* exposure to exactly the *same* radiation can entail quite different (non-thermal)
20 responses in different people . . . [which is] consistent . . . with the fact that not every exposed
21 person is adversely affected (as where not all smokers get lung cancer!). Thus, the report says "it
22 must be concluded that such a risk does indeed exist."

23 35. The SAR standard does not consider the non-thermal effects of RF radiation on health. The
24 scientific studies of the non-thermal effects of RF electromagnetic waves on tissue show DNA
25 breaks, interruptions in communications between cells that may lead to uncontrolled cell growth,
26 major physiological changes, interference with the blood brain barrier, mutations of DNA and
27 chromosome structure, increase in calcium efflux, adverse impact on the immune system,
28 destruction of blood cells, and other effects. These biological effects are warnings of a serious

1 risk of human illness, including cancer.

2 36. Plaintiffs are informed and believe and thereon allege that ANSI and IEEE failed and refused
3 to consider this highly relevant scientific information (including, but not limited to, the information
4 set forth in paragraph 39 below) which indicated a probability of risk of harm to human health
5 from non-thermal RF radiation. ANSI and IEEE also did not consider the effects of the magnetic
6 field from PCT batteries (ELF) on human health or EFL radiation from the PCT. The plaintiffs
7 are informed and believe and thereon allege that the defendants were at all times well aware of all
8 of the above information and the potential for adverse health consequences and acted to prevent
9 consideration of such effects by ANSI and IEEE and to suppress such information from the
10 public.

11 37. From approximately August 8, 1994 to September 7, 1995, Plaintiff Gibb Brower subscribed
12 to cellular telephone service in San Diego from defendant U.S. Wireless for use in his business.
13 He purchased a new Motorola PCT from U.S. Wireless in August of 1994, which he used in
14 connection with their cellular service. Motorola's own tests show that PCT model sold to
15 plaintiffs (called "'hot' UTAC Lite" by Motorola) operates above the 1992 ANSI SAR level.
16 Plaintiffs were never informed by any of the defendants of this fact.

17 38. After the cellular system was sold to GTE Mobilnet, Mr. Brower continued to use the same
18 PCT up until approximately March 1999, when he purchased a PCT manufactured by Sony from
19 GTE Mobilnet. Although Mr. Brower ceased using his PCT in April, 2000, he continued to
20 subscribe to cellular service from GTE Mobilnet and then GTE Wireless until March of 2001
21 because his PCT telephone number was in wide circulation to his business customers and he was
22 able to pick up voice mail messages from these customers using the wireline telephone system.

23 DEFENDANTS' KNOWLEDGE OF THE HEALTH RISKS

24 39. At all times herein mentioned, defendants' were aware of numerous studies and experiments
25 that demonstrated the health hazards of RF radiation dating back to the late 1940s. Defendants'
26 prior knowledge of these studies included, but was not limited to, the following:

27 (a) In 1928, Helen Hosner, a researcher at the Albany Medical College, showed
28 that radio waves were capable of heating body tissue in a study investigating the effects

1 of experimental short wave radio transmitters on workers at a General Electric research
2 facility. Her work was entitled "Heating Effects Observed in a High Frequency Static
3 Field," was published in Science.

4 (b) In a 1948 article published in the archives of Physical Medicine, it was reported
5 that electromagnetic radiation at 2,450 MHz was "highly productive in producing
6 lenticular opacities."

7 © In 1952, researchers noted that "experiments in which the head area alone was
8 directly irradiated suggests that the fatal outcome was the result of an excessive rise in
9 brain temperature. The lethal effects of irradiation to a limited area of the body are
10 different from those in which the entire animal is exposed." That warning was published
11 after researchers had exposed laboratory rats to a few seconds of intense exposure of
12 radio frequency radiation. The warning was published in Microwave Radiation:
13 Biophysical Considerations and Standards Criteria, IEEE Transactions on Biomedical
14 Engineering.

15 (d) In 1955, researchers Schwan and Piersol published their work that radio
16 frequency energy, in a broad range from 500 MHz to 1000 MHz is preferentially
17 deposited beyond the skull and absorbed into the brain.

18 (e) In 1962, it was known in the scientific community that radio frequency energy
19 is most efficiently absorbed into human tissue and is capable of producing undesirable
20 effects.

21 (f) It was well known in the scientific and medical communities in the 1970s that an
22 antenna is the most efficient means of depositing energy into the human body and
23 penetrating human tissue.

24 (g) In 1971, A.W. Guy published in IEEE Transaction in Microwave Theory and
25 Techniques that in order to obtain selective heating, "hot spot" heating, it is
26 necessary to expose the tissue to the near zone fields of the energy source, namely
27 the antenna. From this experimental data at 433 MHz, 750 MHz, and 918 MHz the
28 research confirmed that energy is readily absorbed from the induction fields in the

1 near zone. The absorption within the brain was found to be about 20 times greater
2 than that of the skull and subcutaneous fat.

3 (h) In 1972, in a study by I.J. Bahl, it was demonstrated that frequencies between
4 700 megahertz and 1000 megahertz interact most efficiently with human tissue to
5 yield the greatest energy absorption and that the temporal lobe of the brain is the
6 most sensitive area of the body to this type of radiation. The work performed by
7 Bahl was published in IEEE Transactions on Microwave Theory and Techniques, a
8 publication accepted as authoritative in the medical and scientific communities.

9 (I) In March of 1976, the US Defense Intelligence Agency reviewed the biological
10 effects of non-thermal exposure to microwave and RF radiation. In part this review
11 states:

12 "The potential for development of a number of antipersonnel applications is
13 suggested by the research published in the USSR, East Europe and the West.
14 Sounds and possibly even words which appear to be originating intracranially
15 can be induced by signal modulation at very low average power densities..
16 Combinations of frequencies and other signal characteristics to produce other
17 neurological effects may be feasible in several years. The possibility of
18 inducing metabolic disorders also suggested. Animal experiments reported in
19 the open literature have demonstrated the use of low level microwave signals
20 to produce death by heart seizure or by neurological pathologies resulting from
21 breaching of the blood-brain barrier."

22 (j) In 1977, J.C. Lin published the results of his research in IEEE Transaction
23 on Microwave Theory and Techniques. Results revealed that because microwave
24 absorption occurs in a very short time there is little chance for heat conduction to take
25 place; the conduction of heat takes much longer. At "hot spots" the inability of
26 biological tissue to get rid of excess heat quickly and efficiently may be yet another
27 mechanism leading to destructive exposure.

28 (k) Research confirmed that "hot spot" absorption is dependent on the
diameter of the head model which was used. As the diameter decreased the absorption
effect became more pronounced. Most notably, the greatest absorption enhancement
occurs at frequencies between 800 MHz to 1000 MHz, effectively covering the portable
cellular telephone transmit band.

1 (l) In 1977, O.P. Gandhi published a study in Radio Science which confirmed
2 that radiation absorption enhancement occurs when subjects are close to reflecting
3 surfaces. Gandhi reported a measured energy absorption enhancement factor of as much
4 as 27 in close proximity to corner shaped reflectors and about 4.7 for flat reflectors.

5 (m) In 1978, Motorola studied the efficiency of the antenna and learned that
6 the maximum Specific Absorption Rate exists at the antenna "feed point."

7 (n) Long before the introduction of cellular telephones, researchers provided
8 data indicating that children absorb approximately 50% more radiation within their heads
9 than do adults. The research performed by C.H. Durney, reported in IEEE Transactions
10 on Microwave Theory and Techniques in 1979, only took into consideration the plain
11 wave far field exposures and did not include any of the enhancement effects that are
12 introduced by the near zone operation of cellular telephones.

13 (o) In 1979, researchers Sheppard, Bawin and Adey confirmed in a published
14 article that low intensity modulated (16 Hz) 450 MHz fields produced modified calcium
15 efflux through brain cell membranes. The researchers observed the effect for power
16 density levels lower than 2.0m W/cm². The work was published in Radio Science in
17 December 1979.

18 (p) In 1979, in an experiment by J.L. Meyerhoff, laboratory rats were killed
19 quickly to prevent unwanted changes in brain structure. It was reported that "it is
20 preferable to focus the microwave energy into the head of the animal, thereby increasing
21 the efficiency of the energy delivered to the brain." The experiment was published in
22 IEEE Transactions on Microwave Theory and Techniques in January, 1980.

23 (q) The cellular phone industry conducted extensive research in the early 1980s
24 on the effects of antennas and discovered that there is a large amount of stored energy
25 that is disposed immediately around the antenna of a cell phone.

26 (r) In follow up research, Adey published in 1980 research demonstrating
27 modifications in brain cells at low level radiation exposure. Adey also reported that
28 weak modulated frequency radiation results in major physiological changes. The work

1 was published in Proceedings of the IEEE, January 1980.

2 (s) In 1981, a Motorola researcher was quoted in IEEE Transactions on
3 Vehicular Technology (November) "the proposed standard recognizes the possibility of
4 encountering fields higher than the maximum of the protection guides in the close
5 vicinity of low power radiators, like portable communication equipment. For this
6 reason, an exclusion clause for devices operating at 1 GHz or less end with less than 7
7 watts output power has been proposed.

8 (t) At the same time, Motorola researchers publically stated "the Radio
9 Frequency Protection Guides of the American National Standards Institute at 750 MHz
10 would be violated at .03 centimeters distance by a resident dipole radiating about 1mW
11 and at .5 centimeters distance by a radiated power of 4mW." "A resident dipole
12 provides the most favorable condition of minimum stored energy around the antenna."
13 The researchers conceded that "a rigorous enforcement without exclusion of the radio
14 frequency protection guides would render portable radios practically useless."

15 (u) In an article published in 1981 in IEEE Transactions of Vehicular
16 Technology, a prominent Motorola employee stated, "this paper addresses the question
17 of how long the power radiated by a dipole has to be so that the field near the antenna
18 never exceeds ANSI-Proposed Protection Guides for distances greater than .3
19 centimeters, which is the spacing which at times separates the antenna from the head of
20 the portable radio user. Radiated power of a few milliwatts is enough to exceed the
21 proposed radiation protection guides at 750 MHz. Such reticence in accepting the
22 clause probably resides in the fact that the near field of antennas is largely un-
23 investigated." At the same time, a prominent Motorola researcher stated, "the study of
24 the near field has been substantially neglected." The same prominent Motorola
25 researcher stated, "dipole antennas, although extensively used in portable and mobile
26 communications, have not been carefully investigated in the near field."

27 (v) In 1981, during the time that the exclusion of portable cellular phones was
28 debated within the ANSI Committee, a Motorola researcher was quoted as stating,

1 "strict enforcement .. technically forbids the exposure to a resident dipole about 19
2 centimeters long, radiating 1mW."

3 (w) In 1982, Motorola researchers found that as little as 250 micro Watts
4 radiated power would be enough to exceed the safety standards established by the
5 American National Standards Institute when using the helix antenna as the radiator for
6 near zone exposure. The study was published in IEEE Transactions on Vehicular
7 Technology in November, 1982.

8 (x) The Motorola researchers found that the exposure to the helical antennas
9 yields a power density of as much as 127mW.cm2 when the antenna is placed about 1
10 centimeter distant. The radiated power was only .02 Watts, which is thirty times less
11 than what is radiated from a portable cellular phone.

12 (y) In 1984, in an article published by Microwave News, there was a report of
13 a 1984 study by the United States Air Force in which it was found by Dr, Vernor of the
14 University of California "findings of excess malignancies in the exposed animals is
15 provocative" after being exposed to radio frequency radiation.

16 (z) In 1986, the United States Air Force sponsored a study by A.W. Guy in
17 which 100 rats were irradiated over a three year period and compared to 100 rats that
18 were not exposed to radiation but were otherwise treated identically. After the
19 experiments were completed the researchers reported that 19 malignant tumors
20 developed in the exposed rats as compared to 5 in the control group rats. The
21 researchers claimed that such a difference was "statistically highly significant." They
22 also stated, "at face value this last finding suggests that low levels of microwave
23 radiation can cause cancer in mice." Remarkably, the Environmental Protection Agency
24 accepted a report by the same researchers who suddenly "corrected" their conclusions.
25 The EPA in 1986 stated that evidence of carcinogenicity must be confirmed to a specific
26 tumor type.

27 (aa) In 1989, Stephen Cleary presented a review of the state of research
28 related to non-thermal interactions and effects of radio frequency radiation. He

1 concluded, "cellular studies provide convincing evidence that RF radiation, and other
2 types of electric or magnetic fields, can alter living systems via direct non-thermal
3 mechanisms, as well as via heating."

4 (bb) In 1992, a project performed by A. Maes confirmed a marked increase in
5 the frequency of chromosomal aberrations and the presence of micro nuclei in peripheral
6 blood after exposed to 2,450 MHz radiation.

7 (cc) In 1992, F. Montecchia published an article in IEEE Transactions on
8 Biomedical Engineering that some antennas are specifically designed to use the non
9 radiating induction energy (around the antenna) for penetration into humans. One such
10 antenna was specifically developed to provide an improved method for depositing
11 energy into tissue for hyperthermia treatment.

12 (dd) In 1992, it was reported in Microwave News, a news publication widely
13 circulated and read by the scientific and medical community, that Keith Angstadr, an
14 antenna technician, was treated at Johns Hopkins University for exposure to radio
15 frequency radiation which led to his loss of night vision and color blindness. The retinas
16 of his eyes had sustained 5 mW/cm² of continuous wave radiation.

17 (ee) The medical and scientific communities were well aware of the extensive
18 research published and reported throughout the 1950s and 1960s of the dangers of
19 causing burns when RFR is applied over a bony prominence. It was revealed that non-
20 uniformities such as bone ridges and irregular fat layers caused the energy to be
21 absorbed non-uniformly within the body or head.

22 (ff) In 1993, N. Kuster published an article in IEEE Transactions on
23 Biomedical Engineering which demonstrated the very high level of energy absorbed into
24 the head and brain in the area close to the location of the antenna. Kuster reported that
25 the maximum SAR measured in models of human heads exposed to 1 Watt of energy
26 was 5 mW/g. The antenna employed was approximately one inch from the head of the
27 model.

28 (gg) In December 1993, Chergrinets reported that pulsed 150 to 300 MHz at

1 5 mW/cm² caused chromosomal changes in human peripheral lymphocytes and whole
2 blood cells.

3 (hh) The Defendants knew that early in 1994 research performed in India by
4 Sarkar, et al. confirmed that DNA modifications result from low-level exposure to radio
5 frequency radiation. Clearly, if radio frequency radiation can rearrange the DNA in
6 tissue then it can initiate cancer.

7 (ii) In 1994, Henry Kues, a Johns Hopkins researcher, reported cell
8 destruction and cell death comparable to that which would be expected from ultraviolet
9 radiation was reported from exposure of rhesus monkeys to 1,250, 2,450 and 2,850
10 MHz radio frequency radiation. In a 1980 addition of IEEE Proceedings, it was
11 reported that radio frequency radiation may inactivate enzymes or proteins that are
12 involved in the repair processes. In 1984, two researchers, Dr. Chang and Dr. Milham,
13 made a presentation to the Annual Bioelectromagnetic's Society Conference in which
14 they revealed an increase in malignant tumors in rats after long term exposure to radio
15 frequency radiation in experiments they conducted.

16 (jj) In 1994, L. Verschaeve documented evidence that human and rat blood
17 samples exposed to 450 and 954 MHz radiation provided induced DNA breaks. The
18 research by Verschaeve is but one of many similar reports that became known during
19 1994 and which supports the earlier findings of Cleary.

20 (kk) In an alarming report, D.C. Cain disclosed in 1994 that 837 MHz
21 radiation at a power density exposure level of 3.7 mW/cm² produced a 40% increase in
22 what researchers refer to as "focus Formation." These researchers explained at the 16th
23 Annual Bioelectromagnetics Society that the radio frequency radiation was acting as a
24 co promoter for cancer formation.

25 (ll) On or about June 12, 1994, that the notable researcher Henry Lai, (and
26 others) presented a report that indicated low-level (0.6 mW/g SAR) radio frequency
27 radiation exposure at 2450 MHz resulted in memory deficits for experiments conducted
28 with rats. This was a follow-up presentation of an article by Lai, Horita & Guy

1 published only a few months earlier that provided substantially the same information.
2 The memory deficits were observed as an inability of the rats to perform in a maze
3 experiment. In effect, the rats forgot their way around a familiar area. The researchers
4 explain the effect as being caused by a decrease in brain activity. The low-level radiation
5 exposure is extremely significant. Virtually all operators of Cell phones subject
6 themselves to such exposure and energy absorption while operating the phone. Further,
7 the memory deficits do not stop when the exposure ends. Researchers have learned that
8 the effect persists for five days or more.

9 (mm) Late in 1994 Lai and Singh make known the results of their research
10 which should have been received as conclusive proof that cellular phone radiation is
11 capable of causing harmful biological effects. The researchers reported in the
12 International Journal of Radiation Biology that low level exposure to radio frequency
13 radiation causes an increase in single and double strand breaks in DNA.

14 (nn) Lai and Singh repeated their earlier experiment with similar results in
15 1996. In 1997, Repacholi published the results of his work that demonstrated that mice
16 exposed to low levels of 900 MHz radiation exhibited a higher incidence of cancers than
17 did their non exposed laboratory counterparts.

18 (oo) During a massive six-year study funded by CTIA, the epidemiologist in
19 charge of the study concluded that there was significant evidence that PCT use is a
20 cause of brain cancer. That study found a statistically significant increase in the
21 incidence of a rather rare kind of tumor in the periphery of the brain where the radiation
22 has the greatest access, i.e. the plume. (This is same location and type of tumor as
23 Plaintiff Gibb Brower's tumor).

24 (pp) The majority of the epidemiological studies which have been conducted
25 show a statistically significant increase in brain cancer related to PCT use.

26
27 **DEFENDANTS' CONSPIRACY TO PERSUADE, INTIMIDATE**
28 **AND ALTER ADVERSE HEALTH EFFECT FINDINGS**

40. Plaintiffs are informed and believe and thereon allege that, for fear that the findings of adverse health effects by use of PCTs might damage market development, the defendants' conspired to alter the results of studies to make them more "market friendly," and acted to conceal and suppress information from the public. Researchers who discovered adverse effects associated with PCT use, lost their funding, were fired, found their reputation damaged, and had their work denigrated. Motorola researchers concealed from the public the enhancement effects of antennas and the efficiency with which antennas deposit energy into brain tissue.

41. Almost all of the research funding concerning RF radiation comes from the wireless industry. Plaintiffs are informed and believe and thereon allege that in instances where there have been adverse findings, the defendants have worked to prevent funding to replicate that study. This is part of defendants' larger effort to "create and control the science" and introduce confounders in the way of researchers. Plaintiffs are further informed and believe and thereon allege that the defendants' tactics and conduct included, but were not limited to, the following:

(a) On or about late 1993/early 1994, the cell phone industry, including the named defendants, through CTIA, organized a committee which was to draft a manual to discuss "responsible" PCT use. After receiving a draft of the manual, Thomas Wheeler, president of CTIA, sent out a memorandum expressing his concerns over certain language used in the manual which acknowledged and/or implied that the use of PCTs could pose health risks. An example of such substantive changes follows, with the suggested deletions put forth in bold typeface:

Do not operate your transportable cellular telephone when holding the antenna, or when any person is within 4 inches (10 centimeters) of the antenna. **Otherwise you may impair call quality, may cause your phone to operate at a higher power level than is necessary, and may expose that person to RF energy in excess of the levels established by the updated ANSI Standard.**

If you want to limit RF exposure even further, you may choose to control the duration of your calls or maintain a distances from the antenna of more than 4 inches (10 centimeters).

For best call quality, keep the antenna free from obstructions and point it straight up."

(b) Gandhi, a researcher for Motorola, published findings of his research that were contradictory to Kuster's. Gandhi reported that the maximum SARs within the human

1 brain would be about 30 times lower than what Kuster had reported. But by March of
2 1994, the word in the research community had spread that the Gandhi team had, in fact,
3 misstated SAR figures. During the 1994 Bioelectromagnetics Society 16th Annual
4 Conference, Gandhi produced findings of still higher maximum SARs for the same
5 research. During his presentation, SARs corresponded, at times, to levels as much as
6 ten times higher that were previously reported. The conference results, presented in
7 Copenhagen, Denmark, never reached the U.S. audience. In a letter to the FCC,
8 August 1994, Gandhi explained the nature of the errors and revised his experimental
9 results upward. That is, nearly a full year after the initial false claims of safety - and
10 almost six months after his revisions first became known, the Gandhi team provided an
11 official correction.

12 ©) The Defendants acted in a fraudulent, deceitful, intimidating, illegal, and
13 harassing manner to a researcher by the name of Dr. Jerry L. Phillips, who essentially
14 replicated the DNA damage studies of Lai and Singh and reached the same conclusions,
15 i.e. exposure to low levels of radio frequency radiation causes DNA damage which can
16 develop into cancer.

17 (d) Motorola willfully and wantonly attempted to suppress information from
18 plaintiffs, its other customers, the public, and government regulatory agencies by
19 making illegal threats and illegal acts of intimidation upon Dr. Phillips.

20 (e) After completion of his research, Dr. Phillips expressed his desire to publish said
21 research. Initially, Motorola told Dr. Phillips that it was too early to publish his results
22 and that he needed to do more research. When Dr. Phillips refused to "spin" his
23 research, as demanded by Motorola, Motorola cut off Dr. Phillips' funding.
24 Additionally, Motorola threatened to discredit Dr. Phillips in the scientific community,
25 as well as to ruin his career.

26 (f) After leading the cellular industry's research effort regarding the health hazards
27 associated with PCT use for a period of six years, Dr. Carlo indicated that PCTs may
28 very well pose health risks to its user. In a response similar to that received by Dr.

Phillips, the cell phone industry cut off Dr. Carlo's funding, attempted to discredit him within the scientific community, and attempted to ruin his career. Motorola willfully and wantonly attempted to intimidate government regulatory agencies, by illegal threats and illegal acts of intimation made upon Dr. George Carlo, a notable public health scientist, epidemiologist, lawyer, founder of Health Risk Management Group, and the individual appointed by the cell phone industry to study the health hazards associated with PCT use.

(g) Motorola willfully and wantonly acted in an effort to suppress media reports concerning the risk of adverse health effects from PCT use by threats and intimidation. Specifically, Motorola threatened Channel 4 in Washington, D.C. in an effort to suppress and prevent the dissemination of such information to the public.

**DEFENDANTS' EFFORTS TO FINESSE AND MANIPULATE
ANSI AND IEEE AND GOVERNMENTAL AGENCIES**

42. It is obvious that if the same information about PCTs was available about a new drug or foodstuff, it would never be licensed. However, defendants simply introduced PCTs into the market without any prior oversight from any governmental agency and without environmental or testing for adverse health consequences from electric fields, magnetic fields and electromagnetic fields generated by this equipment and its battery. Once done, the plaintiffs are informed and believe and thereon allege that the defendants set about to co-op the federal agencies which had the jurisdiction to force the industry to prove the safety of PCTs.. Some examples of defendants' conduct includes, but is not limited to, the following:

(a) On July 19, 1993, Elizabeth Jacobson, Deputy Director for Science at the Center for Devices and Radiological Health, Food and Drug Administration, sent a correspondence to CTIA president Thomas Wheeler, which clearly identified certain fraudulent and deceitful statements made by the Defendants to the public regarding the "safety" of PCTs. In pertinent part, this letter states:

I am writing to let you know that we were concerned about two important aspects of your press conference on July 16 concerning the safety of cellular phones, and to ask that you carefully consider the following comments

1 when you make future statements to the press.

2 First, both the written press statements and your verbal comments
3 during the conference seemed to display an unwarranted confidence that these
4 products will be found to be absolutely safe. In fact, the unremittingly upbeat
5 tone of the press packet strongly implies that there can be no hazard, leading
6 the reader to wonder why any further research would be needed at all. (Some
7 readers might also wonder how impartial the research can be when its stated
8 goal is "a determination to reassure consumers." And when the research
9 sponsors predict in advance that "we expect the new research to reach the
10 same conclusions, that the cellular phones are safe.") ...

7 We are even more concerned that your press statements did not
8 accurately characterize the relationship between CTIA and the FDA ... [S]ince
9 it is not yet clear whether we will help to direct the research program, it is
10 premature to state that we will credential the research.

11 The FDA has recently announced that it has been unable to test PCTs to see if they pose a risk of
12 harm from RFR for the past two decades.

13 (b) The plaintiffs are informed and believe and thereon allege that the
14 defendants manipulated the research and pressured members of the ANSI Safety
15 Standard Committee to exempt portable cellular telephones from regulation and
16 compliance under the ANSI standards and pursuant thereto took the following action:

17 During a 1989 meeting of the ANSI Committee, held in Tucson, Arizona,
18 cellular phone industry representatives dominated the membership of the
19 standard setting committee. After a heated discussion and debate over the
20 exclusion clause it was decided upon a vote by the committee that portable
21 cellular telephones would not be excluded from regulation or compliance under
22 the ANSI Safety Standard. A short time after the meeting, at another quietly
23 held committee meeting attended by a select, smaller group of members, the
24 exclusion clause passed, and as a result, cell phones would be excluded from
25 any testing, compliance, or monitoring by any safety standard, government
26 agency, or regulatory body.

27 (e) In 1992, ANSI standard was revised to include, for the first time,
28 specific restrictions on the currents induced in the human body by RF fields. PCTs
were again virtually excluded.

FAILURE TO REASONABLY TEST

43. The defendants have an obligation to conduct a reasonable amount of testing of PCTs for safety before releasing the product for sale to the public. The plaintiffs are informed and believe and thereon allege that the defendants' researchers found that the measured radiation levels from PCTs exceeded ANSI SAR guidelines and should be considered dangerous. Plaintiffs are further informed and believe and thereon allege that at this point, defendants determined that "lack of knowledge" was preferable to more extensive and revealing testing and they decided to go forward with the production, sale and distribution of PCTs.

44. SAR testing is performed on a biological model called a "phantom" using a PCT antenna placed nearby which is sending electromagnetic radiation. Measurements are then made of the magnetic fields which are reflected from and absorbed by the phantom.

45. SAR results can be easily manipulated by changing the distance between the antenna and the phantom. For example, when the distance becomes smaller than 3 cm, the reflected signal increases to more than 25% and the probe receiving the magnetic fields for the calculation of the antenna currents results in being measured smaller than the actual value, which leads to a large SAR error.

46. As mentioned above, the medium used in the phantom is either semi-liquid or jell material. Over time this medium develops air pockets and become contaminated. Such air pockets and contamination serve to reduce the magnetic field reaching the probe and the result is a smaller than actual heating value is reported.

47. The plaintiffs are informed and believe and thereon allege that defendants are well aware of the above problems concerning SAR testing and that they have used these variables to report SAR values which are below actual values and that such actual values exceed the SAR limits.

**DEFENDANTS HAVE HAD THE ABILITY
TO REDUCE OR ELIMINATE THE HEALTH RISK**

48. At all times herein mentioned, defendants' were aware of numerous solutions that could virtually eliminate any health hazards of radiation from PCTs solutions such as shielding, antenna phasing, use of low reluctance material to influence the radiation pattern, shrouds, canting, etc.

1 Plaintiffs are informed and believe and thereon allege that defendants could have incorporated
2 one or more of these safety features in PCTs at minimal cost but instead engaged in a cost-
3 benefit analysis balancing human lives and health against corporate profits. Defendants' prior
4 knowledge of these solutions included, but was not limited to, the following:

5 (a). On October 24, 1991, Hitachi received a patent to reduce the PCT user's
6 exposure to RF radiation "to prevent the health of the user from being injured."

7 (b). On August 11, 1992 Mitsubishi was issued a patent for a cordless
8 telephone designed to "reduce the effect of an electromagnetic wave onto a head of a
9 human body" by coating the handset with shielding material on the side closest to the
10 user's head.

11 (c). On December 26, 1995, Motorola filed a patent wherein "a high magnetic
12 permeability/low reluctance material is incorporated into an antenna to limit radiation,
13 where radiation is not desired."

14 (d). On February 20, 1996, Alcatel N.V. was granted a patent "for protecting
15 a portion of the human body of a user of the transmitter against the radiation from said
16 internal radiating system."

17 (e). On April 9, 1996 a patent was issued to Kevin and Norval Luxon for
18 shield apparatus which utilizes electromagnetic radiation absorbing materials "disposed
19 about the antenna and portable wireless transmitting apparatus and between the user
20 and the antenna and transmitting apparatus to shield or protect the user from the
21 potentially harmful radiation emissions from the wireless communication apparatus."

22 The Motorola patent referred to above lists the Luxon patent as prior art. Plaintiffs
23 are informed and believe and thereon allege that the Luxon invention had been
24 presented to Motorola and discussed with its engineers prior to the grant and
25 publication of that patent.

26 (f). On June 4, 1996, Ericsson received a patent for an output power
27 controller to assure "that the average RF-exposure levels from . . . cellular hand-held
28 radio telephones do not exceed a predetermined level."

1 (g). On August 13, 1996 Catholic University received a patent for the
2 “protection of living systems from adverse effects of electric, magnetic and
3 electromagnetic fields.” The application for the patent states “extensive experimental
4 evidence has shown that exposure to ELF electromagnetic fields can lead to changes in
5 biological cell function. [references]. Similar effects have been demonstrated from
6 exposure to modulated microwaves and RF signals. [references]. Since ALL (PCTs)
7 transmit modulated microwave or RF signals the potential induction of bioeffects
8 through the use of these devices is evident.”

9 (h). On September 23, 1997, Motorola filed a patent for an antenna with an
10 absorptive electromagnetic shield which results in “little to no radiation directed
11 towards the body of the user.”

12 (I). On September 25, 1997, Motorola submitted a patent application wherein
13 “a high magnetic permeability/low reluctance material is incorporated into an antenna
14 to limit radiation, where radiation is not desired..”

15 (j). On July 28, 1998, Nokia received a patent for a shielding layer between
16 the antenna and the user to reduce the electromagnetic irradiation of the user. The
17 application says the PCT antenna is “few centimeters from the brain, the hearing
18 organs, and the organ of equilibrium. Although a direct heating effect could be left
19 without further consideration it has been suggested that modulated radio frequency
20 radiation induces changes in the electrical status, i.e. in the ion balance of nerve cells.
21 A continuous localized exposure to radio frequency irradiation has been suggested to
22 weaken myelin sheets of cells and to eventually lead to an impairment of hearing
23 capability, vertigo, etc. It has been suggested that radio frequency irradiation may
24 stimulate extra growth among supportive cells in the nerve system, which in the worst
25 case it has been suggested could [lead] to a development of malignant tumor, e.g.
26 glioma form supportive cells.”

27 (k). On December 29, 1998 Nokia received a patent for an accessory RF unit
28 which “decreases radiation directed towards the user’s head.”

1 (l). On November 16, 1999, Ericsson Inc. received a patent for an antenna
2 switch to prevent PCT from being used unless the antenna is fully extended. The patent
3 application states that if the antenna is not fully extended "the antenna will be in
4 undesirably close proximity to the user's head, thereby increasing the user's specific
5 absorption rate (SAR) of electromagnetic energy emitted from the antenna."

6 (m). On January 25, 2000, Nokia received a patent for a PCT alarm system so
7 that the user may "reduce to a minimum the SAR value and the quantity of radiation
8 directed at his head or body by employing the correct appliance position and
9 situations and by adjusting the transmission time."

10 (n). On February 29, 2000, Centurion International, Inc. received a patent for
11 an antenna to "tailor the radiation characteristics of the antenna in such a way as to
12 decrease the specific absorption rates (SAR) to the user of the" PCT. The patent
13 application states "questions have arisen concerning the possibility of harmful effects of
14 electromagnetic energy on the human body inasmuch as handheld radios, cellular
15 telephones and other portable wireless communication devices do emit electromagnetic
16 energy. Many studies have been conducted to closely examine the effects of
17 electromagnetic energy on the human body to determine a safe level of exposure and
18 how to accurately measure the level. In conjunction with this, there have been some
19 attempts to move the source of electromagnetic energy away from the body by means
20 of the antenna location or design."

21 49. At all times herein mentioned, intellectual property claims were closely monitored by
22 defendants and they were well aware of the above listed patents, and others, that recognized the
23 adverse health effects from use of PCTs.

24 **MISREPRESENTATION AND FAILURE TO DISCLOSE**

25 50. Plaintiffs are informed and believe and thereon allege that the defendants' strategy has been
26 to aggressively market and sell PCTs and related service by misleading and misinforming
27 potential users about the products and by failing to protect users from potential dangers, which
28 defendants knew or should have known to result from use of these products.

51. Defendants widely and successfully marketed PCTs in California. Defendants undertook an advertising blitz extolling the virtues of PCTs in order to induce widespread use of the product. The defendants' marketing campaign consisted of advertisements on television, radio, and the Internet, promotional literature to be placed in the printed media, and in other advertising media, and other promotional materials to be provided to potential users of PCTs.

52. CTIA and CCAC have been in the forefront of the industry's public relations program to reassure the public of the absence of risk of harm from PCT use. A standard press release by CTIA states that "after years of substantial research, scientists and governments around the world continue to reaffirm that there is no public health threat from the use of wireless phones." CCAC states "[t]here's study after study and the accumulation of all these studies have shown that there are no adverse health effects that have shown anything at all from the cell phones." A Motorola executive announced to the news media that "thousands of studies" had already shown cellular phones were safe. These statements were false and misleading and made in willful and wanton disregard of the right of the plaintiffs and the class to be aware of the risks associated with the use of PCTs.

53. The plaintiffs are informed and believe and thereon allege that the defendants have and continue to manipulate the science to the detriment of consumers by failing to reveal all relevant findings and by selectively withholding important public health information from the public and plaintiffs.

54. For example, the defendants did not tell plaintiffs, or the class, that:

(a) The ANSI standards for RF radiation have:

- (i) consistently been revised downward;
- (ii) do not consider the differences between pulsed and analog signals;
- (iii) do not include consideration of the properties of the near field, which is the radiation next to the user's head;
- (iv) do not include consideration of the effect of the stored energy around the antenna of the PCT;
- (v) do not consider the effect of different types of PCT antennas;

(vi) do not consider relevant scientific studies;
 (vii) are based on "one size fits all model" based on an atypical cadaver that is not relevant to the average adult male and does not account for the substantial physical differences between the size, shape and permeability of the heads of females, teenagers and children; and
 (viii) are used in tests which are known to be inaccurate, subject to manipulation and contamination;
 (ix) do not reveal "hot spots;" and,
 (x) does not take into account that there is a wide range of individual tolerance to RF radiation as the result of the differences body cell water, fat content and other factors.

(b) That despite the adoption of the 1992 ANSI guidelines in 1996, PCTs manufactured prior to that date did not necessarily meet those standards.

(c) The plaintiffs are informed and believe and thereon allege that the model PCT purchased and used by Plaintiff Gibb Brower in 1994 had a SAR level above the level set by the 1992 ANSI guidelines.

(d) The PCTs sold to Plaintiff Gibb Brower are equipped with a retractable whip antennas. During the SAR testing such antennas are fully extended. If the antenna is not extended to its full length, the radiation point will be in an undesirable close proximity to the user's head and there will be a more focused and intense level of electromagnetic energy emitted from the antenna into the brain. Although it is possible to disable the antenna unless it is fully extended, this was not done in the PCTs purchased by Plaintiff Gibb Brower and other members of the class resulting in this inherent defect. Furthermore, the defendants did not tell plaintiffs that the PCT antenna should be extended when the device is in use.

RELIANCE

55. Mr. Brower is 41 years old and owns a landscape business in San Diego. He used his PCT on defendants' cellular system on a more or less continuous basis in the course of his daily

1 business. Defendants were aware of the large number of minutes of airtime for long periods used
2 by Mr. Brower. None of the defendants ever told the plaintiffs or members of the plaintiffs class
3 that there was a risk of harm associated with long and continuous PCT use, or that they should
4 use a headset or hands free device or take other precautionary measures to reduce the radiation
5 exposure from PCTs.

6 56. Plaintiffs and members of the class relied on the defendants' statements that PCTs were
7 totally safe to use in making their decision to purchase and use PCTs. Plaintiffs and members of
8 the class would not have purchased a PCT or used a PCT had they been informed of the studies
9 which show that RF radiation from PCTs penetrates into the brain. Nor would plaintiffs or
10 members of the class have purchased or used a PCT had they been aware of scientific studies that
11 indicate RF radiation can cause biological changes which increase the vulnerability to disease.

12 57. Plaintiffs and the class were entitled to be fully informed concerning the myriad of other
13 scientific studies, clinical observations, and hypotheses by noted scientists and engineers before
14 they consented to exposing themselves to any risk of harm from his use of PCTs. Had the
15 information set forth above been disclosed to plaintiffs they would have ceased using their PCTs.

16 CLASS ACTION ALLEGATIONS

17 58. Plaintiffs bring this action individually and on behalf of plaintiffs' class, consisting of all
18 persons who purchased PCTs in the State of California since August 8, 1994. Excluded from
19 this class are the defendants herein, members of their immediate families, any entity in which
20 defendants have a controlling interest, the legal representatives, heirs, successors, or assigns of
21 any such excluded party, the affiliates and co-conspirators of any defendant or anyone who is
22 otherwise involved in the wrongdoing alleged herein.

23 59. The class is composed of several hundred thousand persons, probably exceeding on million,
24 the joinder of which is impracticable. The disposition of their claims through this class action
25 will benefit both the parties and this Court. The identities of individual members of the class are
26 ascertainable through the billing records of the defendants.

27 60. The questions of law and fact common to the class predominate over questions which may
28 affect individual class members. Plaintiffs are asserting claims that are typical of the claims of the

entire class and plaintiff will fairly and adequately represent and protect the interests of the class in that they have no interest antagonistic to those of the class. Plaintiff has retained counsel who is competent and experienced in the technology which is at the core of this case.

61. Plaintiffs and the class have suffered irreparable harm and damages as a result of defendants' unlawful and unfair conduct. Absent a class action, the defendants will retain millions of dollars received as a result of their wrongdoing and will succeed in their effort to avoid performing their duty to develop an accurate standard and test and will avoid the actions necessary to produce a safe PCT that does not radiate into the person of the user. Because of the complexity of the issues, few, if any, class members could afford to seek legal redress for the wrongs complained of herein. Absent a class action, the class members will continue to be unknowingly and unwillingly exposed to radiation which carries a risk of harm to their health. Defendants continue, to this day, to deny wrongdoing and continue to engage in the tortured, tortuous, unlawful and unfair conduct which is the subject of this complaint.

RELIEF

62. Plaintiffs seek damages on behalf of plaintiffs' class in an amount sufficient to conduct independent studies to: (a) determine the characteristics and power density of the near field and ELF radiation from PCTs; (b) determine the characteristics and power density of the stored energy field around the antennas of PCTs; (c) determine the difference in characteristics and power density from the different antennas commonly in use on PCTs manufactured and sold by defendants to members of the class; (d) develop accurate SAR formulas based on the physical characteristics of average head size, shape and characteristics of: adult males, adult females, teenagers and children, taking into account "hot spot" formation; and, (e) to conduct scientific studies as may be necessary to determine the risk to health to members of plaintiffs' class by reason of the effects on the human body of all forms of electrical and magnetic exposure from PCTs, including, but not limited to analog, digital, non-ionizing and ELF signals.

63. Plaintiffs seek damages in an amount necessary to monitor and test plaintiff Gibb Brower and members of plaintiffs' class for any adverse health effects arising out of their use of PCTs.

64. Plaintiffs seek relief under Business & Professions Code section 17200 and Civil Code

1 section 1750, et. seq., including, but not limited to, an injunction requiring the defendants to fully
2 inform members of plaintiffs' class of any and all scientific and epidemiological studies which
3 indicate a potential risk of harm to their health from PCT radiation, excluding any PCTs which
4 have been equipped with shielding devices that prevent RF and ELF radiation from entering the
5 user's body, and warn class members that the standards and methods used to test their PCTs are
6 unreliable.

7 65. Plaintiffs seek punitive damages in an amount sufficient to deter the defendants' malicious
8 and irresponsible corporate policies, which have made uninformed guinea pigs of the plaintiffs
9 and the plaintiffs' class, to be awarded to plaintiffs and to each class member.

10 66. Plaintiffs are informed and believe and thereon allege that the heating and other non-ionizing
11 effects of RF and of ELF radiation from Gibb Brower's PCTs, altered or injured the cells in his
12 head and/or altered or reduced the protective mechanism of these cells, thereby increasing his
13 exposure to free radicals and other elements which can cause brain cancer and other illness.

14 Plaintiffs are further informed and believe and thereon allege that said radiation was a
15 contributing cause of Gibb Brower's brain tumor and they seek damages related to such illness
16 and injury.

17 67. Plaintiffs seek restitution of the money paid by them and members of the class for cellular
18 service and for PCTs.

19 68. Plaintiffs ask for a permanent injunction enjoining defendants, their partners, joint venturers,
20 agents, servants, employees, and all persons acting under, in concert with, or from them directly
21 or indirectly, or in any manner, in any way engaging in deceptive practices by continuing to
22 advertise to consumers in California that any PCT, which has not been equipped with shielding
23 devices that prevent RF and ELF radiation from entering the users body, is safe.

24 69. Plaintiffs ask for a permanent injunction enjoining defendants, their partners, joint venturers,
25 agents, servants, employees, and all persons acting under, in concert with, or from them directly
26 or indirectly, or in any manner, in any way engaging in deceptive practices by continuing to
27 advertise the public that the SAR standard has any validity.

28 **FIRST CAUSE OF ACTION**

(Violation of Business and Professions Code Sections 17200, et. seq.)

(Unlawful Business Practices)

70. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 69 of this First Amended Class Action Complaint.

71. Defendants' acts in setting standards which they knew were based on an inadequate foundation and without consideration of necessary information, in devising test methods which were farcical and wholly inadequate, in falsely maintaining that governments and scientists from around the world had found that PCTs were safe, all were designed to mislead and misinform the public about the safety of PCTs, is a practice which constitutes fraud, deceit and false advertising, in violation of Business and Professions Code §17500.

72. By committing the acts alleged herein, defendants have engaged in false advertising and unlawful business practices in violation of Business and Professions Code §§17200, et seq.

73. Pursuant to Business and Professions Code §17203, plaintiffs seek an order of this Court enjoining defendants from continuing to conduct business via their unlawful business practice and continuing to maintain that PCTs, for which a sham standard has been set, which are not properly tested and for which the long term effects of radiation on users has not been fully determined, to be safe and pose no risk of harm. Further, plaintiffs ask for an injunction requiring defendants to notify the class that there is evidence of a risk of harm to them in using their PCTs and enjoining defendants from refusing to make full restitution of all monies obtained from such users who wish to rescind their service and PCT purchase agreements.

SECOND CAUSE OF ACTION

(Violation of Business and Professions Code Sections 17200, et. seq.)

(Unfair and/or Fraudulent Business Practices)

74. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 73 of this First Amended Class Action Complaint.

75. Defendants' acts of continuing to disseminate unfair, deceptive, untrue, or misleading statements about the validity and efficacy of the SAR formula, the accuracy of the methods used to test PCT radiation, the "safety endorsements" of PCTs by governments and scientists world-

1 wide, all with the knowledge that relevant elements of PCT radiation have not been analyzed,
 2 much less tested or understood, and knowing that no government agency has been able to say
 3 that PCTs are safe, and with the knowledge that significant scientific and epidemiological
 4 evidence suggests that PCT use increases the risk of harm to the health of the user, constitutes a
 5 practice which constitutes fraud, deceit and false advertising in violation of Civil Code §§ 1572,
 6 1710, 1770, and Business and Professions Code §17500.

7 76. By committing the acts alleged herein, defendants have engaged in unfair and/or fraudulent
 8 business practices in violation of Business and Professions Code §§ 17200, et seq.

9 77. Pursuant to Business and Professions Code § 17203, plaintiffs seek an order of this Court
 10 enjoining defendants from continuing to falsely advertise or conduct business via their unfair and
 11 fraudulent business practices.

12 THIRD CAUSE OF ACTION

13 (Violation of Consumers Legal Remedies Act, Civil Code Sections 1750, et seq.)

14 78. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through
 15 77 of this First Amended Class Action Complaint.

16 79. Defendants, and each of them, have engaged in deceptive practices, unlawful methods of
 17 competition and/or unfair acts as defined by Civil Code §§ 1750, et seq., to the detriment of
 18 plaintiffs and the class. The following deceptive practices have been intentionally, knowingly and
 19 unlawfully perpetrated upon plaintiffs and the class:

20 a. In violation of Civil Code §1770(a)(5), defendants' acts and practices constitute
 21 misrepresentations that the PCTs in question have under gone testing, based on valid standards
 22 developed by using all of the scientific data available, which were designed to measure the effects
 23 of radiation on all users, including children, and, which testing provides objective results,
 24 calculated to meet the requirements of a trustworthy standard, and PCTs have been found by
 25 governments and scientists to be safe and not to pose a risk of harm to PCT users.

26 b. In violation of Civil Code §1770(a)(7), defendants have engaged in deceptive, untrue
 27 and/or misleading advertising that PCTs are of a particular standard, quality or grade, when it is
 28 of another.

c. In violation of Civil Code §1770(a)(9), defendants advertised PCTs which are not as advertised or represented; and

d. In violation of Civil Code §1770(a)(14), defendants have misrepresented that a transaction confers or involves legal rights, obligation, or remedies upon plaintiffs and members of the class regarding the providing of PCTs, when it does not.

80.. As a result, plaintiffs and the class have suffered irreparable harm, entitling them to both injunctive relief and restitution, compensatory and punitive damages, disgorgement of wrongfully obtained profits, and attorneys' fees and costs.

FOURTH CAUSE OF ACTION

(Intentional Misrepresentation)

81. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 80 of this First Amended Class Action Complaint.

82. In order to maintain and/or increase their sales and profits, defendants, through their public statements, advertising, promotional campaigns and marketing, have, by the use of false statements and/or material omissions of fact, have made the following intentional misrepresentations:

a. That the SAR standards developed and used to test PCTs for all kinds of radiation that might cause harm to the user are true and accurate, and such standards are based a consideration of all scientific and other evidence as well as the average physical structure of all potential users, including children, and were designed to measure all kinds and types of radiation from PCTs;

b. That true and accurate test procedures and equipment are used to test PCTs in a manner that gives an objective result not is not subject to manipulation or other factors which create false readings;

c. That no RF radiation from PCTs enter the body of the user; and

d. That governments and all scientists from around the world have found that PCTs are totally "safe" and pose no risk of harm whatsoever to the user.

83. In making these misrepresentations of fact to customers and subscribers, while knowing such representations to be false, defendants have intentionally misrepresented material facts and

1 breached their duty not to do so. Plaintiff and members of the class have suffered damages by
 2 exposure to RF radiation, without their knowledge or consent, which may pose an increased risk
 3 to their health and by illness, which some have suffered.

4 **FIFTH CAUSE OF ACTION**

5 (Negligent Misrepresentation)

6 84. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through
 7 83 of this First Amended Class Action Complaint.

8 85. In making representations of fact to plaintiffs and the class as described herein, defendants
 9 failed to fulfill their duty to disclose all the material facts as set forth above. As an actual and
 10 proximate result of defendants' negligence, plaintiff and the class were deceived and misled, and
 11 thereby unaware that:

- 12 a. The SAR test is a sham;
- 13 b. SAR testing is wholly inadequate and riddled with deficiencies and subject to manipulation;
- 14 c. RF radiation from PCTs enters the body of the user;
- 15 d. There is scientific and epidemiological evidence which demonstrates a risk of harm from RF
 16 radiation; and,
- 17 e. Governments from around the world have universally said that they cannot say that PCTs
 18 are safe and more testing needs to be done.

19 86. Plaintiffs and the class were unaware of defendants' affirmative misrepresentations and
 20 failure to disclose the fact that RF and ELF radiation from PCTs penetrates into the user's body,
 21 that the standards and testing methods used to evaluate the health effects of such radiation are
 22 wholly inadequate and ineffective and that scientific and epidemiological studies have found that
 23 such radiation poses a risk of harm to the health of the user.

24 87. Plaintiffs seek an order enjoining the defendants from failing and refusing to:

- 25 a. Make full restitution of all monies wrongfully obtained by their acts and practices
 26 complained of herein;
- 27 b. Immediately cease all such misleading, deceptive, and unfair business practices; and
- 28 c. Disgorge all ill-gotten revenues and/or profits.

SIXTH CAUSE OF ACTION

(Strict Product Liability)

88. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 87 of this First Amended Class Action Complaint.

89. Defendants are engaged in the setting of standards, selection of safety features, design, manufacture, testing and sale of PCTs.

90. Plaintiffs and members of the class purchased such goods from defendants, without knowledge that the same were defective and dangerous.

91. At all times, plaintiffs and members of the class used defendants' goods in the manner for which they were intended.

92. As a result of the defective condition of defendants' goods, which existed at the time of manufacture and continued to exist during the use of such goods, plaintiff and members of the class were exposed to penetrating RF radiation without their knowledge or consent, which radiation posed a risk of harm to the health of plaintiff and members of the class.

93. Plaintiffs do not know the extent of the damage that may have been done to members of the class as a result of such exposure, however, plaintiff Gibb Brower has contracted brain cancer squarely within the plum of the radiation from his PCTs and he is informed and believes and thereon alleges that this radiation was a contributing cause to his illness. As a result thereof, defendants are strictly liable to plaintiffs and members of the class for injuries sustained, and to be sustained, and the damages incurred thereby.

SEVENTH CAUSE OF ACTION

(Strict Product Liability - Failure to Warn and Defective Manufacture and Design)

94. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 93 of this First Amended Class Action Complaint.

95. Defendants are or were standard setters, designers, manufacturers, suppliers and promoters of PCTs which were manufactured, supplied and promoted by defendants and were placed in the stream of commerce, sold and promoted by defendants.

96. These PCTs were defective and unreasonably dangerous in that the design and manufacture

1 failed to include proper and necessary protective shielding or warnings that RF radiation would
 2 enter the user's body and has the potential of increasing the vulnerability to adverse health
 3 effects.

4 97. The PCTs were defective in that they were marketed and sold without development of
 5 adequate standards, or proper testing or analysis of the characteristics and power of the radiation
 6 entering the user's body or consideration of the possible harm to the health of the user.

7 98. Defendants could have designed and manufactured PCTs so that no radiation entered the
 8 user's body.

9 99. Defendants failed to provide plaintiffs and the class with any protection or warning that RF
 10 radiation would penetrate their bodies when they used PCTs or of the possible adverse health
 11 effects from such radiation.

12 100. As a direct result of the defective and unreasonably dangerous conditions of PCTs and the
 13 defendants' failure to warn, members of the class have been exposed to radiation that poses a
 14 risk of harm to their health. Plaintiff Gibb Brower has developed cancer in his brain, has
 15 developed complications related to the cancer, has undergone surgery, radiation and therapy, and
 16 suffers from numerous impairments and disabilities, along with severe emotional distress and
 17 anxiety.

18 EIGHTH CAUSE OF ACTION

19 (Negligence)

20 101. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through
 21 100 of this First Amended Class Action Complaint.

22 102. Defendants owed the plaintiffs and the class the duty of ordinary and appropriate care in
 23 setting standards, testing, designing, selecting safety features, manufacture, sale and promotion
 24 of PCTs and related transmission services.

25 103. Defendants failed to fulfill that duty in numerous respects including, but not limited to, the
 26 following:

27 a. In setting the SAR standard, defendants did not consider the properties of the near field
 28 radiation (which is the radiation which actually enters the user's brain), did not consider the

1 power or effect of stored energy which collects around the PCT antenna, did not consider the
2 effect of non-ionizing and/or ELF radiation, used a "one size fits all model" based on a very large
3 male cadaver which is not representative of the average adult male (much less females, teenagers
4 and children), did not consider the differences between pulsed and analog signals, did not
5 consider hot spots, did not make any allowance for the fact that there is a wide range of
6 individual tolerance to RF radiation and simply abandoned the process to defendants who had a
7 vested interest in setting a standard that PCTs could "pass."

8 b. In designing PCTs, defendants neglected to implement appropriate and necessary safety
9 materials and antenna designs that can prevent any radiation from entering the body of the user.

10 c. In establishing testing procedures to measure the heating component of RF radiation, the
11 defendants concocted a sugar water substance to represent the layers of hair, skin, fat, muscle,
12 fluid and brain cells, which they knew or should have known, would not accurately replicate the
13 propagation of RF radiation waves in the head of the user.

14 d. In testing PCTs, the defendants used a phantom which contained sugar water subject to
15 contamination, air pockets and other factors which reduced the probability of accurate
16 measurements. Furthermore, this procedure was fraught with error by reason of the fact that the
17 PCT could be position and repositioned until the desired test result was achieved.

18 e. In marketing PCTs, the defendants failed to provide adequate warning to the plaintiffs and
19 the class that radiation would enter the brain of the user and may pose a risk of harm to their
20 health.

21 104. As a direct and proximate result of defendants' conduct, the plaintiffs and the class have
22 been exposed to radiation, the full nature and extent of which is unknown, at a time when the
23 science and epidemiological studies show that even low levels of radiation can lead to a number
24 of adverse health effects, including but not limited to: psychological changes, interference with
25 the immune system, increase in calcium efflux, DNA damage, stress response, interference with
26 the blood brain barrier, change in calcium in the heart, enhances cell proliferation. Plaintiffs
27 allege that radiation from his PCTs has precipitated Gibb Brower's brain cancer, which has
28 caused him to suffer economic loss, psychological stress, loss of earning capacity and medical

1 and related expenses.

2 **NINTH CAUSE OF ACTION**

3 (Breach of Express Warranty)

4 105. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through
5 104 of this First Amended Class Action Complaint.

6 106. Defendants expressly warranted that PCTs were safe for human use.

7 107. Defendants' warranties constitute affirmations of fact, promises and descriptions regarding
8 the quality and safety of their products and services.

9 108. Defendants breached these warranties in that they failed to prevent radiation from PCTs
10 from entering the user's body, which could have been easily accomplished by incorporating
11 methods, materials and equipment which were available for such purpose.

12 109. Plaintiffs are informed and believe and thereon allege that such radiation constitutes a risk
13 of harm to the health of users of PCTs.

14 110. PCTs do not conform to express representations because they have not been found to be
15 safe and have the potential for causing serious biological and health effects.

16 **TENTH CAUSE OF ACTION**

17 (Breach of Implied Warranty)

18 111. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through
19 110 of this First Amended Class Action Complaint.

20 112. At the time defendants marketed, sold, distributed and/or promoted PCTs to plaintiffs and
21 the class, defendants knew of the use for which PCTs were intended and impliedly warranted the
22 product to be of merchantable quality and safe and fit for such use.

23 113. Plaintiffs and members of the class relied upon the skill and judgment of defendants in
24 determining that the PCTs were of merchantable quality and safe and fit for their intended use.

25 114. Defendants breached said warranties because such PCTs are not fit for their intended
26 purpose and are unreasonably dangerous.

27 **ELEVENTH CAUSE OF ACTION**

28 (Conspiracy)

1 115. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through
2 114 of this First Amended Class Action Complaint.

3 116. At all times relevant, the defendants formed confederacies and entered into agreements
4 and/or tacit understandings to individually, jointly, and in conspiracy with each other, to first
5 block any safety standard and then later, to conceal and prevent consideration of relevant
6 information, until a safety standard was finally adopted which PCTs could pass. The defendants
7 accomplished this objective in part by using an atypical model of a human head, that has little, if
8 any, relevance to the physical structure of the heads of the intended users of PCTs, and by using
9 propagation, electrical and magnetic characteristics of the far field of PCT radiation without
10 regard to the fact that the very different near field is the portion of the PCT transmission that
11 enters the brain of the user, and without considering the effect of stored energy surrounding the
12 PCT antenna or the difference in analog and digital transmissions, or considering other relevant
13 scientific information.

14 117. Having constructed and adopted an inadequate standard, defendant then formed
15 confederacies and entered into agreements and/or tacit understandings to individually, jointly,
16 and in conspiracy with each other to develop a test method that is so susceptible to error and
17 manipulation that would virtually ensure that defendants' PCTs could meet the standard.

18 118. Defendants also formed confederacies and entered into agreements and/or tacit
19 understandings to individually, jointly, and in conspiracy with each other to suppress knowledge
20 of health hazards from RF fields and to attack and discredit any scientific researchers who made
21 such findings thereby controlling and manipulating the "science" concerning this issue.

22 119. Defendants formed confederacies and entered into agreements and/or tacit understandings
23 to individually, jointly, and in conspiracy with each other to prevent the use or deployment of any
24 shields, protective materials or electronic methods to block radiation from entering the users
25 body. Plaintiffs are informed and believe and thereon allege that, in taking this action, the
26 defendants were motivated by considerations of cost, fear of government regulation or that such
27 safety measures would be construed as an acknowledgment that there is a risk from RF radiation.

28 120. Defendants formed confederacies and entered into agreements and/or tacit understandings

1 to individually, jointly, and in conspiracy with each other lobbied, pressured, deceived and
 2 mislead various governmental agencies (including hiring away government employees) to prevent
 3 inquiry into the risk of harm to the health of the user from PCT radiation.

4 121. Defendants formed confederacies and entered into agreements and/or tacit understandings
 5 to individually, jointly, and in conspiracy with each other, to manipulate, intimidate and control
 6 the media with respect to reporting studies which establish adverse biological effects and
 7 epidemiology studies indicate an increase risk of brain cancer from using PCTs.

8 122. At all times relevant, defendants collectively spent millions of dollars per year to finance
 9 selective research designed to confuse and cast doubt on the growing evidence that radiation
 10 from PCTs can harm the health of user.

11 123. Defendants' conduct exhibits such an entire want of care as to establish that their actions
 12 were a result of fraud, evil motive, actual malice, and the conscious and deliberate disregard of
 13 foreseeable harm as to form the basis for an award of punitive damages.

14 TWELFTH CAUSE OF ACTION

15 (Fraud)

16 124. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through
 17 123 of this First Amended Class Action Complaint.

18 125. At all times herein, defendants and each of them, in setting standards and testing methods
 19 for PCTs, in their advertising, public statement, instruction manuals, instruction manuals and
 20 their promotional literature, continuously made false representation to lead the public and the
 21 plaintiff and the class to believe that:

22 a. The public can rely on such standards and testing methods to safeguard PCT users from any
 23 risk of harm;

24 b. Governments and scientists have found that PCTs are absolutely safe and pose no risk of
 25 harm to the user;

26 c. There is no way that PCTs can constitute any risk of harm whatsoever to users.

27 126. At all times herein, defendants and each of them, in setting standards and testing methods
 28 for PCTs, in their advertising, public statement, instruction manuals, instruction manuals and

1 their promotional literature, concealed and failed to disclose that:

2 a. Radiation from PCTs enters the body of the user;

3 b. The effect of this radiation is to heat the water in the users cells and that heat can damages
4 cells and cause other harm;

5 c. That the near field radiation had not been studied or quantified and that it is the near field
6 that penetrates the brain of the user;

7 d. That the stored energy around the PCT antenna is thousands of times more powerful than
8 the energy in the far field, which the defendants use at a measure of power density of the signal
9 entering the brain;

10 e. That the non-ionizing radiation from the PCT has been identified in a substantial body of
11 scientific and epidemiological studies as a significant risk of harm to the health of the user; and

12 f. Methods exist to prevent a user from being radiated but the defendants have decided not to
13 incorporate such safety measures in PCTs.

14 127. Plaintiffs are informed and believe and thereon allege that when a PCT fails a SAR test, it is
15 tested again and again, until a "pass" score is recorded and only the pass score is reported and
16 the failure results are not revealed.

17 128. Plaintiffs and the class justifiably relied on the false representations made by the defendants,
18 were defrauded by defendants' concealment and failure to conduct proper research, testing,
19 development and implementation of safety features and as a result suffered damages

20 129. At all times relevant, notwithstanding their knowledge of the inadequacy and
21 ineffectiveness of the standard and the testing procedures, and the growing body of evidence that
22 indicates that there is a serious risk of harm to users from PCT radiation, the defendants
23 continued, and continue to this very day, to put dangerous PCTs into the stream of commerce
24 without informing the public or warning of the potential danger to health from the use of PCTs.
25 Indeed, defendants have pointed their advertising towards teenagers and children, knowing that
26 the risk of harm to them is the highest.

27 130. At all times relevant hereto, the defendants actually knew of the facts alleged herein above
28 and continued to design, manufacture, market and sell PCTs so as to maximize sales and profits

1 at the expense of public health and safety. Defendants' conduct exhibits such an entire want of
 2 care as to establish that their actions were a result of fraud, evil motive, actual malice, and the
 3 conscious and deliberate disregard of the foreseeable harm to plaintiffs and the class. The
 4 plaintiffs and the class are therefore entitled to punitive damages.

5 **THIRTEENTH CAUSE OF ACTION**

6 (Civil Battery)

7 131. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through
 8 130 of this First Amended Class Action Complaint.

9 132. Neither the plaintiffs or the class were aware of or consented to the penetration of RF
 10 radiation into their bodies or brains.

11 133. The defendants, through their conduct and omissions, acting by and through their
 12 respective agents, servants, and/or employees, inflicted harmful or offensive contact to plaintiff
 13 and the class by exposing them to radiation fields which they knew could cause biological
 14 changes and had the potential to cause permanent and significant health risks and effects.

15 134. Defendants intended to and did inflict this specific harm upon plaintiff, Gibb Brower, and
 16 an unknown number of the class.

17 **FOURTEENTH CAUSE OF ACTION**

18 (Punitive Damages)

19 135. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through
 20 134 of this First Amended Class Action Complaint.

21 136. All of the defendants' conduct was willful, wanton and defendants acted with reckless and
 22 conscious disregard for the consequences of their actions.

23 137. As a result, each and all of the defendants herein are liable for punitive and exemplary
 24 damages in such amounts as a jury deems just and proper under the circumstances.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, plaintiffs and the class pray judgment against defendants, and each of them, as
 27 follows:

28 1. Plaintiffs seek damages on behalf of plaintiffs' class in an amount sufficient to conduct

1 independent studies to: (a) determine the characteristics and power density of the near field and
2 ELF radiation from PCTs; (b) determine the characteristics and power density of the storage
3 energy field around the antennas of PCTs; (c) determine the difference in characteristics and
4 power density from the different antennas commonly in use on PCTs manufactured and sold by
5 defendants; (d) develop accurate SAR formulas based on the physical characteristics of average
6 head size, shape and characteristics of: adult males, adult females, teenagers and children, taking
7 into account "hot spot" formation; and, (e) to conduct scientific studies as may be necessary to
8 determine the risk to health to members of plaintiffs' class by reason of the effects on the human
9 body of all forms of electrical and magnetic exposure from PCTs, including, but not limited to
10 analog, digital and ELF signals.

11 2. Plaintiffs seek damages in an amount necessary to monitor and test plaintiff Gibb Brower
12 and members of plaintiffs' class for any adverse health effects arising out of their use of PCTs.

13 3. Plaintiffs seek relief under Business & Professions Code section 17200 and Civil Code
14 section 1750, et. seq., including, but not limited to, an injunction requiring the defendants to fully
15 inform members of plaintiffs' class of any and all scientific and epidemiological studies which
16 indicate a potential risk of harm to their health from PCT radiation, excluding any PCTs which
17 have been equipped with shielding devices that prevent RF and ELF radiation from entering the
18 user's body., and warn such members that the standards and methods used to test their PCTs are
19 unreliable.

20 4. Plaintiffs seek punitive damages in an amount sufficient to deter the defendants' malicious
21 and irresponsible corporate policies which have made uninformed guinea pigs of the plaintiffs and
22 the plaintiffs' class to be awarded to plaintiffs and to each class member.

23 5. Plaintiffs seek restitution of the money paid by them and by the class for the amounts paid
24 for cellular service and for PCTs.

25 6. Plaintiffs ask for a permanent injunction enjoining defendants, their partners, joint
26 venturers, agents, servants, employees, and all persons acting under, in concert with, or from
27 them directly or indirectly, or in any manner, in any way engaging in deceptive practices by
28 continuing to advertise to consumers in California that any PCT, which has not been equipped

1 with shielding devices that prevent RF and ELF radiation from entering the users body, is safe.

2 7. Plaintiffs ask for a permanent injunction enjoining defendants, their partners, joint
3 venturers, agents, servants, employees, and all persons acting under, in concert with, or from
4 them directly or indirectly, or in any manner, in any way engaging in deceptive practices by
5 continuing to advertise the public that the SAR standard and/or test methods have any validity.

6 8. Plaintiffs ask for a permanent injunction enjoining defendants, their partners, joint
7 venturers, agents, servants, employees, and all persons acting under, in concert with, or from
8 them directly or indirectly, or in any manner, in any way engaging in deceptive practices by
9 continuing to state that governments and scientists, as a group, have found that PCTs are safe for
10 human use.

11 9. Plaintiffs ask for judgment against defendants, jointly and severally, for special and general
12 damages for injury and illness sustained by plaintiffs and by members of the class by reason of RF
13 radiation from PCTs in an amount to be determined at trial.

14 10. Plaintiffs ask for compensatory damages and/or full restitution of all funds acquired from
15 defendants' unfair business practices.

16 11. Plaintiffs ask for imposition of a constructive trust upon all monies and assets defendants
17 have acquired as a result of their unfair, unlawful and/or fraudulent and misleading practices;

18 12. Plaintiffs ask for punitive and exemplary damages to be awarded to plaintiffs and each
19 class member.

20 13. Plaintiffs ask for both pre- and post-judgment interest on any amounts awarded.

21 14. Plaintiffs ask for an award of reasonable attorney's fees.

22 15. Plaintiffs ask that they recover costs of this action; and

23 16. That this Court afford such other relief that it deems just and proper under the
24 circumstances.

25 ///

26 ///

27 ///

28 ///

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: December 5, 2001



Carl Hilliard
1246 Stratford Court
Del Mar, California 92104
Telephone: (858) 509-2938
Attorney for Plaintiffs

TO:

CARL B. HILLIARD #34270
1246 STRATFORD
DEL MAR, CA 92014

GIBB BROWER, et al.

Plaintiff(s)

vs.

MOTOROLA INC

Defendant(s)

Case No.: GIC765987

**NOTICE OF
CASE MANAGEMENT CONFERENCE**

Sanctions pursuant to C.C.P. 575.2 and 177.5 may be imposed
for failure to serve this notice.

COUNSEL: CHECK SERVICE LIST. IF YOU HAVE BROUGHT A PARTY INTO THIS CASE WHO IS NOT INCLUDED IN THE SERVICE LIST, Superior Court Rules, Division II, Rule 5.10 REQUIRES YOU TO SERVE THEM WITH A COPY OF THIS NOTICE.

Notice is given that the above-entitled case has been set for the reason listed below and at the location shown above.
All inquiries regarding this notice should be referred to the court and phone number listed above.

| <u>TYPE OF HEARING</u> | <u>DATE</u> | <u>TIME</u> | <u>REPORT TO JUDGE</u> |
|----------------------------|-------------|-------------|------------------------|
| Case Management Conference | 11/30/01 | 10:00AM | SHERIDAN REED |

A Case Management Conference Questionnaire must be completed by counsel for all parties and timely filed with the court at least five days prior to the initial Case Management Conference (Rule 5.10).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing.

CERTIFICATE OF SERVICE

I, STEPHEN THUNBERG, certify that: I am not a party to the above-entitled case; on the date shown below, I served this notice on the parties shown by placing a true copy in a separate envelope, addressed as shown; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at San Diego, California.

Dated: 10/30/01

STEPHEN THUNBERG

Clerk of the Superior Court

by LINDA CRAIG, Deputy Clerk

CARL B. HILLIARD (P)

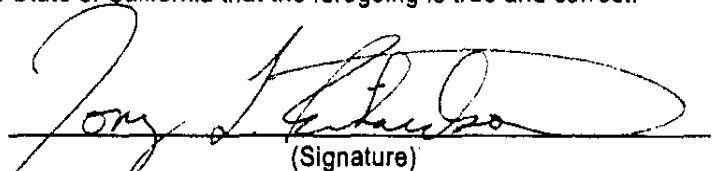
| | | | |
|---|--|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Tony L. Richardson (SBN 126230) Kirkland & Ellis 777 So. Figueroa St., Ste. 3400, L.A. CA 90017 TELEPHONE NO.: 213/680-8442 FAX NO.: 213/680-8500 ATTORNEY FOR (Name): Motorola, Inc. | | FOR COURT USE ONLY <div style="text-align: center;"> F I L E D STEPHEN THUNBERG Clerk of the Superior Court NOV 6 2001 By: P. WOODS, Deputy </div> | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input checked="" type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input checked="" type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1501 6TH AVE., SAN DIEGO, CA 92101-3298 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4TH AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792 | | | |
| PLAINTIFF(S) Gibb Brower and Kim Brower | | | |
| DEFENDANT(S) Motorola, Inc., et al. | | JUDGE: <u>Sheridan Reed</u> | |
| IN THE MATTER OF Brower v. Motorola, Inc., et al. | | DEPT: <u>68</u> | |
| PEREMPTORY CHALLENGE (CCP 170.6; Superior Court Rules, Division II, Rule 5.5) | | CASE NUMBER GIC 765987 | |

Tony L. Richardson is ☐ a party ☒ an attorney for a party in the above-entitled case and declares that Judge Sheridan Reed, the Judge to whom this case is assigned, is prejudiced against the party or the party's attorney or the interests of the party or the party's attorney such that the said party or parties believe(s) that a fair and impartial trial or hearing cannot be had before such Judge.

WHEREFORE, pursuant to the provisions of §170.6 of the California Code of Civil Procedure, I respectfully request that this Court issue its order reassigning said case to another, and different, Judge for further proceedings.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: November 1, 2001

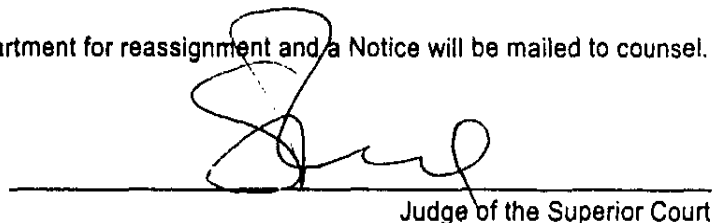

(Signature)

ORDER OF THE COURT

☒ GRANTED ☐ DENIED

This case is referred to Presiding/Supervising Department for reassignment and a Notice will be mailed to counsel.

Dated: 11/6/01


Judge of the Superior Court

FOR OFFICE USE ONLY

This case has been reassigned to Judge Charles R. Hayes per Presiding/Supervising Judge Wayne R. Peterson on Nov. 8, 2001.

NOV 6 2001

BROWER V. MOTOROLA, INC., et. al.**Case No. GIC 765987**

By: P. WOODS, Deputy

PROOF OF SERVICE BY MAIL

I, the undersigned, declare: I am over the age of eighteen years and not a party to the cause; I am employed in, or am a resident of, the County of San Diego, California, where the mailing occurs; and my business address is: 701 B Street, Suite 1550, San Diego, California 92101.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

I caused to be served the following document(s):

PEREMPTORY CHALLENGE

by placing a copy of each document in a separate envelope addressed to each addressee, respectively, as follows:

Carl Hilliard, Esq.
LAW OFFICES OF CARL B. HILLIARD
1246 Stratford
Del Mar, CA 92014

Richard B. Goetz, Esq.
Olivia D. A. Fields, Esq.
O'MELVENY AND MYERS
400 South Hope Street, Suite 1050
Los Angeles, California 90071-2899

William McCurine, Jr., Esq.
SOLOMON WARD SEIDENWURM &
SMITH
401 B Street, Suite 1200
San Diego, California 92101

Scott A. Elder
William T. Plybon
Jane P. Thorpe
ALSTON & BIRD, LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309

Marchell M. Willian, Esq.
Terrence J. Dee, Esq.
Jane S. Park, Esq.
KIRKLAND & ELLIS
200 East Randolph Drive
Chicago, Illinois 60601

Jeffrey S. Davidson, Esq.
Tony L. Richardson, Esq.
Amanda Wong, Esq.
KIRKLAND & ELLIS
777 South Figueroa Street
Los Angeles, California 90017

Francis A. Citera, Esq.
GREENBERG TRAUIG, P.C.
77 West Wacker Drive, Suite 2500
Chicago, Illinois 60601

1 I then sealed each envelope and, with the postage thereon fully prepaid, I placed each for
2 deposit in the United States Postal Service, this same day, at my business address shown above,
3 following ordinary business practices.

4 I declare under penalty of perjury under the laws of the State of California that the foregoing
5 is true and correct.

6 Executed at San Diego, California, on November 2, 2001.

7
8
9 Tyla L. Jernigan

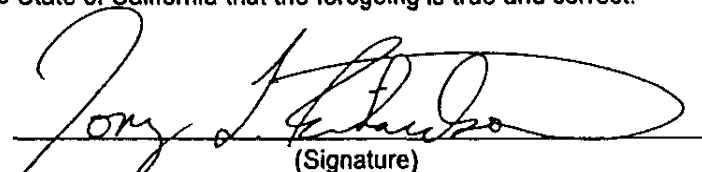
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|---|--|---|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Tony L. Richardson (SBN 126230) Kirkland & Ellis 777 So. Figueroa St., Ste. 3400, L.A. CA 90017 TELEPHONE NO: 213/680-8442 FAX NO: 213/680-8500 ATTORNEY FOR (Name): Motorola, Inc. | | FOR COURT USE ONLY <div style="text-align: center;"> F I L E D STEPHEN THUNBERG Clerk of the Superior Court NOV 6 2001 By: P. WOODS, Deputy </div> | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input checked="" type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input checked="" type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1501 6TH AVE., SAN DIEGO, CA 92101-3296 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4TH AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792 | | | |
| PLAINTIFF(S) Gibb Brower and Kim Brower | | JUDGE: <u>Sheridan Reed</u> | |
| DEFENDANT(S) Motorola, Inc., et al. | | DEPT: <u>68</u> | |
| IN THE MATTER OF Brower v. Motorola, Inc., et al. | | | |
| PEREMPTORY CHALLENGE (CCP 170.6; Superior Court Rules, Division II, Rule 5.5) | | CASE NUMBER GIC 765987 | |

Tony L. Richardson, is ☐ a party ☒ an attorney for a party in the above-entitled case and declares that Judge Sheridan Reed, the Judge to whom this case is assigned, is prejudiced against the party or the party's attorney or the interests of the party or the party's attorney such that the said party or parties believe(s) that a fair and impartial trial or hearing cannot be had before such Judge.

WHEREFORE, pursuant to the provisions of §170.6 of the California Code of Civil Procedure, I respectfully request that this Court issue its order reassigning said case to another, and different, Judge for further proceedings.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: November 1, 2001


(Signature)

☒ GRANTED ☐ DENIED

ORDER OF THE COURT

This case is referred to Presiding/Supervising Department for reassignment and a Notice will be mailed to counsel.

Dated: NOV 06 2001

SHERIDAN E. REED

Judge of the Superior Court

FOR OFFICE USE ONLY

This case has been reassigned to Judge _____ per Presiding/Supervising Judge _____ on _____.

BROWER V. MOTOROLA, INC., et. al.

Case No. GIC 765987

PROOF OF SERVICE BY MAIL

I, the undersigned, declare: I am over the age of eighteen years and not a party to the cause; I am employed in, or am a resident of, the County of San Diego, California, where the mailing occurs; and my business address is: 701 B Street, Suite 1550, San Diego, California 92101.

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I caused to be served the following document(s):

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by placing a copy of each document in a separate envelope addressed to each addressee, respectively, as follows:

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LAW OFFICES OF CARL B. HILLIARD
1246 Stratford
Del Mar, CA 92014

Richard B. Goetz, Esq.
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400 South Hope Street, Suite 1050
Los Angeles, California 90071-2899

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401 B Street, Suite 1200
San Diego, California 92101

Scott A. Elder
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Jane P. Thorpe
ALSTON & BIRD, LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309

Marchell M. Willian, Esq.
Terrence J. Dee, Esq.
Jane S. Park, Esq.
KIRKLAND & ELLIS
200 East Randolph Drive
Chicago, Illinois 60601

Jeffrey S. Davidson, Esq.
Tony L. Richardson, Esq.
Amanda Wong, Esq.
KIRKLAND & ELLIS
777 South Figueroa Street
Los Angeles, California 90017

Francis A. Citera, Esq.
GREENBERG TRAURIG, P.C.
77 West Wacker Drive, Suite 2500
Chicago, Illinois 60601

1 I then sealed each envelope and, with the postage thereon fully prepaid, I placed each for
2 deposit in the United States Postal Service, this same day, at my business address shown above,
3 following ordinary business practices.

4 I declare under penalty of perjury under the laws of the State of California that the foregoing
5 is true and correct.

6 Executed at San Diego, California, on November 2, 2001.

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9 Tyla L. Jernigan
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28

1 ALSTON & BIRD LLP

Jane F. Thorpe (pro hac vice)

2 William T. Plybon (pro hac vice)

A. Annette Teichert (pro hac vice)

3 Michael B. Arnold (pro hac vice)

One Atlantic Center

4 1201 West Peachtree Street

Atlanta, Georgia 30309-3424

5 (404) 881-7000

(404) 881-7777 (facsimile)

6 Attorneys for Defendant GTE Mobilnet
7 of San Diego Incorporated

8 WRIGHT & L'ESTRANGE

Robert C. Wright (051864)

9 701 B Street, Suite 1550

San Diego, California 92101

10 (619) 231-4844

(619) 231-6710 (facsimile)

11 Attorneys for Defendant Motorola, Inc.

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF SAN DIEGO**

15 Gibb Brower and Kim Brower,

16 Plaintiffs,

17 vs.

) Case No.: GIC 765987

) **PROOF OF SERVICE BY MAIL**

18 Motorola, Inc., a Delaware corporation; U.S.)
19 West Wireless, LLC, a Colorado corporation;)
20 U.S. West Communications, Inc., a Colorado)
21 corporation; Verizon Communications, Inc.,)
22 a New York corporation; GTE Mobilnet of)
23 San Diego Incorporated, a Delaware)
24 corporation; GTE Wireless San Diego LLC,)
25 a California Limited Liability corporation;)
26 Sony Electronics Inc., a Delaware)
27 corporation; Cellular Telecommunications)
28 and Internet Association, a District of)
Columbia corporation; Cellular Carriers)
Association of California, a California)
corporation; GTE Corporation, a Delaware)
corporation; Verizon Wireless, a joint)
venture and DOES 4 through 100, inclusive,)

Defendants.

BROWER V. MOTOROLA, INC., et. al.

Case No. GIC 765987

PROOF OF SERVICE BY MAIL

I, the undersigned, declare: I am over the age of eighteen years and not a party to the cause; I am employed in, or am a resident of, the County of San Diego, California, where the mailing occurs; and my business address is: 701 B Street, Suite 1550, San Diego, California 92101.

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I caused to be served the following document(s):

PEREMPTORY CHALLENGE (signed by Judge Reed on November 6, 2001)

by placing a copy of each document in a separate envelope addressed to each addressee, respectively, as follows:

Carl Hilliard, Esq.
LAW OFFICES OF CARL B. HILLIARD
1246 Stratford
Del Mar, CA 92014

Richard B. Goetz, Esq.
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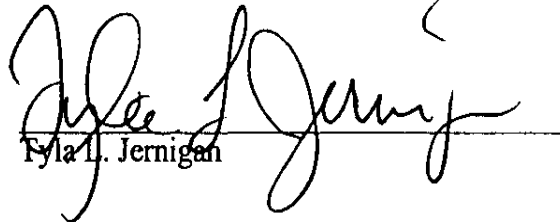
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77 West Wacker Drive, Suite 2500
Chicago, Illinois 60601

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3 following ordinary business practices.

4 I declare under penalty of perjury under the laws of the State of California that the foregoing
5 is true and correct.

6 Executed at San Diego, California, on November 9, 2001.

7
8 
9 Fyla L. Jernigan

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

330 W. Broadway, Dept. 66
San Diego, CA 92101
619-685-6017

TO:

FILE COPY: PAGE 1 OF 1

1 NOTICE PREPARED

GIBB BROWER, et al.

Plaintiff(s)

vs.

MOTOROLA INC

Defendant(s)

Case No.: GIC765987

**NOTICE OF CASE REASSIGNMENT
DUE TO CHALLENGE, RECUSAL
OR SPECIAL ASSIGNMENT**

COMPLAINT FILED 04/19/01

EFFECTIVE IMMEDIATELY, THE ABOVE-ENTITLED CASE HAS BEEN REASSIGNED TO THE INDEPENDENT CALENDAR PROGRAM WITH JUDGE CHARLES R. HAYES, DEPARTMENT 66, 619-685-6017.

ALL SUBSEQUENT DOCUMENTS FILED IN THIS CASE MUST INCLUDE THE NAME OF THE NEW JUDGE AND THE DEPARTMENT NUMBER ON THE FIRST PAGE IMMEDIATELY BELOW THE NUMBER OF THE CASE. ALL COUNSEL AND PARTIES IN PRO PER ARE ADVISED THAT DIVISION II OF THE SUPERIOR COURT RULES IS STRICTLY ENFORCED. IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

UNLESS NOTIFIED OTHERWISE, ALL PENDING DATES ARE VACATED. PLEASE RESCHEDULE ANY CURRENTLY PENDING MOTIONS OR EX PARTE HEARINGS IN THE NEW DEPARTMENT.

CERTIFICATE OF SERVICE

I, STEPHEN THUNBERG, certify that: I am not a party to the above-entitled case; on the date shown below, I served this notice on the parties shown by placing a true copy in a separate envelope, addressed as shown; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at San Diego, California.

Dated: 11/09/01

STEPHEN THUNBERG

Clerk of the Superior Court

by LINDA CRAIG, Deputy Clerk

CARL B. HILLIARD
1246 STRATFORD
DEL MAR, CA 92014

TO:

CARL B. HILLIARD #34270
1246 STRATFORD
DEL MAR, CA 92014

GIBB BROWER, et al.

Plaintiff(s)

vs.

MOTOROLA INC

Defendant(s)

Case No.: GIC765987

**NOTICE OF
CASE MANAGEMENT CONFERENCE**

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for failure to serve this notice.

COUNSEL: CHECK SERVICE LIST. IF YOU HAVE BROUGHT A PARTY INTO THIS CASE WHO IS NOT INCLUDED IN THE SERVICE LIST, Superior Court Rules, Division II, Rule 5.10 REQUIRES YOU TO SERVE THEM WITH A COPY OF THIS NOTICE.

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All inquiries regarding this notice should be referred to the court and phone number listed above.

| <u>TYPE OF HEARING</u> | <u>DATE</u> | <u>TIME</u> | <u>REPORT TO JUDGE</u> |
|----------------------------|-------------|-------------|------------------------|
| Case Management Conference | 01/18/02 | 10:15AM | CHARLES R. HAYES |

A Case Management Conference Questionnaire must be completed by counsel for all parties and timely filed with the court at least five days prior to the initial Case Management Conference (Rule 5.10).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing.

CERTIFICATE OF SERVICE

I, STEPHEN THUNBERG, certify that: I am not a party to the above-entitled case; on the date shown below, I served this notice on the parties shown by placing a true copy in a separate envelope, addressed as shown; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at San Diego, California.

Dated: 11/20/01

STEPHEN THUNBERG

Clerk of the Superior Court

by LINDA CRAIG, Deputy Clerk

CARL B. HILLIARD (P)

1 Carl Hilliard (State Bar No. 034270)
1246 Stratford
2 Del Mar, California 92014
Telephone: (858) 509-2938
3 Attorney for Plaintiffs
4
5
6
7

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 Gibb Brower and Kim Brower,
11 Plaintiffs,

Case No.: GIC765987

12 vs.

13 Motorola, Inc., a Delaware
corporation; U.S. West Wireless, LLC,
14 a Colorado corporation; U. S. West
Communications, Inc., a Colorado
15 corporation; Verizon Communications,
Inc., a New York corporation; GTE
16 Mobilnet of San Diego Incorporated,
a Delaware corporation; GTE Wireless
17 San Diego LLC, a California Limited
Liability corporation; Sony Electronics
18 Inc., a Delaware corporation; Cellular
Telecommunications and Internet
19 Association, a District of Columbia
corporation; Cellular Carriers
20 Association of California, a California
corporation; and DOES 1 through
21 100, inclusive,

22 Defendants.

CERTIFICATE OF SERVICE BY MAIL

23 I, the undersigned, declare: I am over the age of eighteen years and not a party to the
24 cause; I am employed in and a resident of the County of San Diego, California, where the
25 mailing occurs; and my business address is 1246 Stratford, Del Mar, California, 92014.

26 I further declare that I am readily familiar with the business' practice for collection and
27 processing of correspondence for mailing with the United States Postal Service; and that the
28 correspondence shall be deposited with the United States Postal Service this sme day in the

ordinary course of business. I caused to be served the following document(s):

NOTICE OF CASE MANAGEMENT CONFERENCE

by placing a copy of each document in a separate envelope addressed to each addressee,
respectively, as follows:

Robert C. Wright, Esq.
Wright & L'Estrange
701 B Street, Suite 1550
San Diego, California 92101

Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309

William McCurine, Jr., Esq.
Solomon Ward Seidenwurm & Smith
401 B Street, Suite 1200
San Diego, California 92101

Richard B. Goetz, Esq.
O'Melveny and Myers
400 South Hope Street, Suite 1050
Los Angeles, California 90071

Marchell M. Willan, Esq.
Kirkland & Ellis
200 East Randolph Drive
Chicago, Illinois 60601

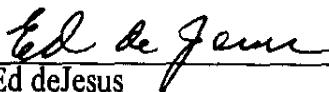
Jeffrey S. Davidson, Esq.
Kirkland & Ellis
777 South Figueroa Street
Los Angeles, California 90017

Meryl C. Maneker, Esq.
Wilson Petty Kosmo & Turner
550 West C Street, Suite 1050
San Diego, California 92101

I sealed each envelope and, with the postage thereon fully prepaid, I placed each for
deposit in the United States Postal Service, this same day, at my business address shown above.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed at San Diego, California, on December 3, 2001.


Ed deJesus

FILED
STEPHEN THUNDER
Clerk of the Superior Court

DEC 12 2001

By: B. TOM, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

GIBB BROWER and KIM BROWER,

Plaintiffs,

vs.

MOTOROLA, INC., a Delaware
Corporation, et al.,

Defendants.

Case No.: GIC 765987

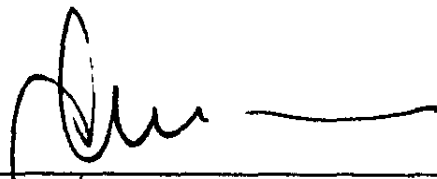
ORDER

The Court on its own Motion and in furtherance of justice hereby recuses itself pursuant to CCP §170.1(a)(6)(A). The Court owns shares in AT&T Wireless which procured Defendant GTE's wireless services in San Diego.

This case is ordered transferred to the Presiding Department for reassignment.

IT IS SO ORDERED.

Date: DEC 12 2001


CHARLES R. HAYES,
Judge of the Superior Court

*This case has been reassigned to Judge Hayden
as Supv. Judge Strauss on Dec. 18, 2001.*

| | |
|---|--|
| PLAINTIFF(S) GIBB BROWER and KIM BROWER | COURT USE ONLY F I L E D STEPHEN THUNBERG Clerk of the Superior Court DEC 13 2001 By: B. TOM, Deputy |
| DEFENDANT(S) MOTOROLA, INC., a Delaware Corporation, et al. | |
| CLERK'S CERTIFICATE OF SERVICE BY MAIL(CCP 1013a(4)) | CASE NUMBER: GIC 765987 |

I, STEPHEN THUNBERG, Clerk of the Superior Court of the State of California, for the County of San Diego, do hereby certify that: I am not a party to the cause referred to herein; that on the date shown below, I placed a true copy of the:

ORDER

in a separate envelope, addressed to each addressee shown below; each envelope was then sealed and, with postage thereon fully prepaid, was deposited in the United States Postal Service at:

☒ San Diego ☐ Vista ☐ El Cajon ☐ Chula Vista, California.

CARL HILLIARD ESQ
LAW OFFICES OF CARL HILLIARD
1246 STRATFORD
DEL MAR CA 92014

RICHARD B GOETZ ESQ
OLIVIA FIELDS ESQ
O'MELVENY AND MYERS
400 SOUTH HOPE ST STE 1050
LOS ANGELES CA 90071-2899

WILLIAM McCURINE JR ESQ
SOLOMON WARD ET AL
401 B STREET STE 1200
SAN DIEGO CA 92101

SCOTT A ELDER
WILLIAM T PLYBON
JANE P THORPE
ALSTON & BIRD LLP
ONE ATLANTIC CENTER
1201 WEST PEACHTREE STREET
ATLANTA GA 30309

MARCHELL M WILLIAN ESQ
TERRENCE DEE ESQ
JANE PARK ESQ
KIRKLAND & ELLIS
200 EAST RANDOLPH DRIVE
CHICAGO IL 60601

JEFFREY DAVIDSON ESQ
TONY RICHARDSON ESQ
AMANDA WONG ESQ
KIRKLAND & ELLIS
777 SOUTH FIGUEROA STREET
LOS ANGELES CA 90017

FRANCIS CITERA ESQ
GREENBERG TRAURIG PC
77 WEST WACKER DRIVE STE 2500
CHICAGO IL 60601

STEPHEN THUNBERG
Clerk of the Superior Court

Exhibit C
Page 78

Date: DEC 13 2001

By: , Deputy

TO:

FILE COPY: PAGE 1 OF 1

1 NOTICE PREPARED

GIBB BROWER, et al.

Plaintiff(s)

vs.

MOTOROLA INC

Defendant(s)

Case No.: GIC765987

**NOTICE OF FAILURE
TO COMPLY**

Sanctions pursuant to C.C.P. 575.2 and 177.5 will be
before the Court.

Notice is given that the above-entitled case has been set for the reason listed below and at the location shown above.
All inquiries regarding this notice should be referred to the court and phone number listed above.

TYPE OF HEARING

DATE

TIME

REPORT TO JUDGE

Failure to File Certificate of
Service

01/18/02 10:15AM CHARLES P. HAYES

HEARING CANCELLED

The hearing will be cancelled if BOTH of the following occur prior to _____

- 1) File the above document.
- 2) Stipulate to and pay a sanction in the amount of \$50, payable to "San Diego Superior Court", WITH A COPY OF THIS NOTICE, in the Accounting Division of the Superior Court.

If you are unable to comply with the above, appearance at the hearing is mandatory.

CARL B. HILLIARD, Esq. is the counsel being sanctioned.

CERTIFICATE OF SERVICE

I, STEPHEN THUNBERG, certify that: I am not a party to the above-entitled case; on the date shown below, I served this notice on the parties shown by placing a true copy in a separate envelope, addressed as shown; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at San Diego, California.

Dated: 12/19/01

STEPHEN THUNBERG Clerk of the Superior Court

by LINDA CRAIG, Deputy Clerk

CARL B. HILLIARD
1246 STRATFORD
DEL MAR, CA 92014

TO:

FILE COPY: PAGE 1 OF 1

1 NOTICE PREPARED

GIBB BROWER, et al.

Plaintiff(s)

vs.

MOTOROLA INC

Defendant(s)

Case No.: GIC765987

**NOTICE OF FAILURE
TO COMPLY**

Sanctions pursuant to C.C.P. 575.2 and 177.5 will be
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All inquiries regarding this notice should be referred to the court and phone number listed above.

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REPORT TO JUDGE

Failure to File Certificate of
Service

01/18/02 10:15AM CHARLES D. HAYES

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- 1) File the above document.
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CARL B. HILLIARD, Esq. is the counsel being sanctioned.

CERTIFICATE OF SERVICE

I, STEPHEN THUNBERG, certify that: I am not a party to the above-entitled case; on the date shown below, I served this notice on the parties shown by placing a true copy in a separate envelope, addressed as shown; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at San Diego, California.

Dated: 12/19/01

STEPHEN THUNBERG Clerk of the Superior Court

by LINDA CRAIG, Deputy Clerk

CARL B. HILLIARD
1246 STRATFORD
DEL MAR, CA 92014

TO:

FILE COPY: PAGE 1 OF 1

1 NOTICE PREPARED

GIBB BROWER, et al.

Plaintiff(s)

vs.

MOTOROLA INC

Defendant(s)

Case No.: GIC765987

**NOTICE OF CASE REASSIGNMENT
DUE TO CHALLENGE, RECUSAL
OR SPECIAL ASSIGNMENT**

COMPLAINT FILED 04/19/01

EFFECTIVE IMMEDIATELY, THE ABOVE-ENTITLED CASE HAS BEEN REASSIGNED TO THE INDEPENDENT CALENDAR PROGRAM WITH JUDGE J. RICHARD HADEN, DEPARTMENT 72, 619-685-6027.

ALL SUBSEQUENT DOCUMENTS FILED IN THIS CASE MUST INCLUDE THE NAME OF THE NEW JUDGE AND THE DEPARTMENT NUMBER ON THE FIRST PAGE IMMEDIATELY BELOW THE NUMBER OF THE CASE. ALL COUNSEL AND PARTIES IN PRO PER ARE ADVISED THAT DIVISION II OF THE SUPERIOR COURT RULES IS STRICTLY ENFORCED. IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

UNLESS NOTIFIED OTHERWISE, ALL PENDING DATES ARE VACATED. PLEASE RESCHEDULE ANY CURRENTLY PENDING MOTIONS OR EX PARTE HEARINGS IN THE NEW DEPARTMENT.

CERTIFICATE OF SERVICE

I, STEPHEN THUNBERG, certify that: I am not a party to the above-entitled case; on the date shown below, I served this notice on the parties shown by placing a true copy in a separate envelope, addressed as shown; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at San Diego, California.

Dated: 12/19/01

STEPHEN THUNBERG

Clerk of the Superior Court

by LINDA CRAIG, Deputy Clerk

CARL B. HILLIARD
1246 STRATFORD
DEL MAR, CA 92014

1 Carl Hilliard (State Bar No. 034270)
1246 Stratford
2 Del Mar, California 92014
Telephone: (858) 509-2938
3 Attorney for Plaintiffs
4
5
6
7

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 Gibb Brower and Kim Brower,
11 Plaintiffs,

Case No.: GIC765987

12 vs.

PROOF OF SERVICE BY MAIL

13 Motorola, Inc., a Delaware
corporation; U.S. West Wireless, LLC,
14 a Colorado corporation; U. S. West
Communications, Inc., a Colorado
15 corporation; Verizon Communications,
Inc., a New York corporation; GTE
16 Mobilnet of San Diego Incorporated,
a Delaware corporation; GTE Wireless
17 San Diego LLC, a California Limited
Liability corporation; Sony Electronics
18 Inc., a Delaware corporation; Cellular
Telecommunications and Internet
19 Association, a District of Columbia
corporation, Cellular Carriers
20 Association of California, a California
corporation; and DOES 1 through
21 100, inclusive,

Assigned to: Judge J. Richard Haden
Department 72

22 Defendants.
23

24 I, the undersigned, declare: I am over the age of eighteen years and not a party to the
25 cause; I am employed in and a resident of the County of San Diego, California, where the mailing
26 occurs; and my business address is 1246 Stratford, Del Mar, California, 92014.

27 I further declare that I am readily familiar with the business' practice for collection and
28 processing of correspondence for mailing with the United States Postal Service; and that the

correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

I caused to be served the following document(s):

NOTICE OF CASE REASSIGNMENT TO HON. J. RICHARD HAYDEN

by placing a copy of each document in a separate envelope addressed to each addressee, respectively, as follows:

Robert C. Wright, Esq.
Wright & L'Estrange
701 B Street, Suite 1550
San Diego, California 92101

Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309

William McCurine, Jr., Esq.
Solomon Ward Seidenwurm & Smith
401 B Street, Suite 1200
San Diego, California 92101

Richard B. Goetz, Esq.
O'Melveny and Myers
400 South Hope Street, Suite 1050
Los Angeles, California 90071

Marchell M. Willan, Esq.
Kirkland & Ellis
200 East Randolph Drive
Chicago, Illinois 60601

Jeffrey S. Davidson, Esq.
Kirkland & Ellis
777 South Figueroa Street
Los Angeles, California 90017

Meryl C. Maneker, Esq.
Wilson Petty Kosmo & Turner
550 West "C" Street
Suite 1050
San Diego, California 92101

I sealed each envelope and, with the postage thereon fully prepaid, I placed each for deposit in the United States Postal Service, this same day, at my business address shown above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Del Mar, California, on December 21, 2001.


Ed deJesus

TO:

CARL B. HILLIARD #34270
1246 STRATFORD
DEL MAR, CA 92014

GIBB BROWER, et al.

Plaintiff(s)

vs.

MOTOROLA INC

Defendant(s)

Case No.: GIC765987

**NOTICE OF CASE REASSIGNMENT
DUE TO CHALLENGE, RECUSAL
OR SPECIAL ASSIGNMENT**

COMPLAINT FILED 04/19/01

EFFECTIVE IMMEDIATELY, THE ABOVE-ENTITLED CASE HAS BEEN REASSIGNED TO THE INDEPENDENT CALENDAR PROGRAM WITH JUDGE J. RICHARD HADEN, DEPARTMENT 72, 619-685-6027.

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UNLESS NOTIFIED OTHERWISE, ALL PENDING DATES ARE VACATED. PLEASE RESCHEDULE ANY CURRENTLY PENDING MOTIONS OR EX PARTE HEARINGS IN THE NEW DEPARTMENT.

CERTIFICATE OF SERVICE

I, STEPHEN THUNBERG, certify that: I am not a party to the above-entitled case; on the date shown below, I served this notice on the parties shown by placing a true copy in a separate envelope, addressed as shown; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at San Diego, California.

Dated: 12/19/01

STEPHEN THUNBERG

Clerk of the Superior Court

by LINDA CRAIG, Deputy Clerk

CARL B. HILLIARD (P)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Gibb Brower and Kim Brower,)
)
Plaintiffs,)

v.)

Case No. _____

)
Motorola, Inc., a Delaware corporation;)
U.S. West Wireless, LLC, a Colorado)
corporation; U.S. West)
Communications, Inc., a Colorado)
corporation; Verizon Communications,)
Inc., a New York corporation; GTE)
Mobilnet of San Diego Incorporated, a)
Delaware corporation; GTE Wireless)
San Diego LLC, a California Limited)
Liability Corporation; Sony Electronics)
Inc., a Delaware corporation; Cellular)
Telecommunications and Internet)
Association, a District of Columbia)
corporation; Cellular Carriers)
Association of California, a California)
corporation; and DOES 1 through 100,)
inclusive,)

Defendants.)

CONSENT TO REMOVAL

The undersigned defendants--without waiving, and specifically reserving, all defenses, objections, exceptions, and motions, including but not limited to lack of service, improper service, lack of personal jurisdiction, improper venue, and the arbitrability of these claims--consent to, authorize, and join in the removal of the captioned action from the Superior Court of the State of California, County of San Diego to this Honorable Court.

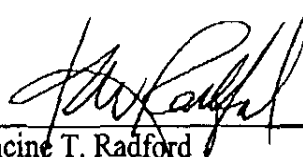
{signature on next page}

Respectfully submitted,

William T. Plybon, Esq.
Alston & Bird LLP

For Defendants Verizon Communications
Inc., "Verizon Wireless," GTE Corporation,
and GTE Mobilnet of San Diego
Incorporated.

GOODIN, MACBRIDE, SQUERI,
RITCHIE & DAY, LLP

By _____
Francine T. Radford
Attorneys for Defendant
Cellular Carriers Association of California

2707/029/X30599

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Gibb Brower and Kim Brower,

Plaintiffs,

v.

Case No. _____

Motorola, Inc., a Delaware corporation;

U.S. West Wireless, LLC, a Colorado

corporation; U.S. West

Communications, Inc., a Colorado

corporation; Verizon Communications,

Inc., a New York corporation; GTE

Mobilnet of San Diego Incorporated, a

Delaware corporation; GTE Wireless

San Diego LLC, a California Limited

Liability Corporation; Sony Electronics

Inc., a Delaware corporation; Cellular

Telecommunications and Internet

Association, a District of Columbia

corporation; Cellular Carriers

Association of California, a California

corporation; and DOES 1 through 100,

Inclusive,

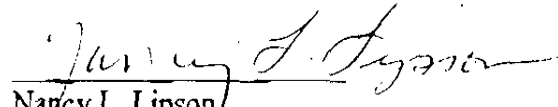
Defendants.

CONSENT TO REMOVAL

The undersigned defendants--without waiving, and specifically reserving, all defenses, objections, exceptions, and motions, including but not limited to lack of service, improper service, lack of personal jurisdiction, improper venue, and the arbitrability of these claims--consent to, authorize, and join in the removal of the captioned action from the Superior Court of the State of California, County of San Diego to this Honorable Court.

[signature on next page]

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Nancy L. Lipson", written over a horizontal line.

Nancy L. Lipson
Counsel for Qwest Communications

For Defendants U.S. West Wireless, LLC,
and U.S. West Communications, Inc. N/K/A
Qwest Wireless, LLC and Qwest
Corporation

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Gibb Brower and Kim Brower,)

Plaintiffs,)

v.)

Case No. _____

Motorola, Inc., a Delaware corporation;)

U.S. West Wireless, LLC, a Colorado)
corporation; U.S. West)

Communications, Inc., a Colorado)

corporation; Verizon Communications,)

Inc., a New York corporation; GTE)

Mobilnet of San Diego Incorporated, a)

Delaware corporation; GTE Wireless)

San Diego LLC, a California Limited)

Liability Corporation; Sony Electronics)

Inc., a Delaware corporation; Cellular)

Telecommunications and Internet)

Association, a District of Columbia)

corporation; Cellular Carriers)

Association of California, a California)

corporation; and DOES 1 through 100,)

inclusive,)

Defendants.

CONSENT TO REMOVAL

The undersigned defendant--without waiving, and specifically reserving, all defenses, objections, exceptions, and motions, including but not limited to lack of service, improper service, lack of personal jurisdiction, improper venue, and the arbitrability of these claims--consents to, authorizes, and joins in the removal of the captioned action from the Superior Court of the State of California, County of San Diego to this Honorable Court.

Respectfully submitted,


GTE Wireless San Diego, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Gibb Brower and Kim Brower,)
)
Plaintiffs,)

v.)

Case No. _____

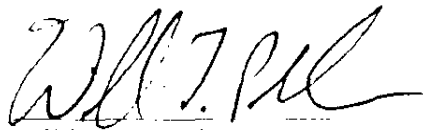
)
Motorola, Inc., a Delaware corporation;)
U.S. West Wireless, LLC, a Colorado)
corporation; U.S. West)
Communications, Inc., a Colorado)
corporation; Verizon Communications,)
Inc., a New York corporation; GTE)
Mobilnet of San Diego Incorporated, a)
Delaware corporation; GTE Wireless)
San Diego LLC, a California Limited)
Liability Corporation; Sony Electronics)
Inc., a Delaware corporation; Cellular)
Telecommunications and Internet)
Association, a District of Columbia)
corporation; Cellular Carriers)
Association of California, a California)
corporation; and DOES 1 through 100,)
inclusive,)
)
Defendants. _____

CONSENT TO REMOVAL

The undersigned defendants--without waiving, and specifically reserving, all defenses, objections, exceptions, and motions, including but not limited to lack of service, improper service, lack of personal jurisdiction, improper venue, and the arbitrability of these claims--consent to, authorize, and join in the removal of the captioned action from the Superior Court of the State of California, County of San Diego to this Honorable Court.

[signature on next page]

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W.T. Plybon". The signature is fluid and cursive, with the first and last names being more prominent than the middle initial.

William T. Plybon, Esq.
Alston & Bird LLP

For Defendants Verizon Communications
Inc., "Verizon Wireless," GTE Corporation,
and GTE Mobilnet of San Diego
Incorporated.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Gibb Brower and Kim Brower,)

Plaintiffs,)

v.)

Case No. _____

)
Motorola, Inc., a Delaware corporation;)
U.S. West Wireless, LLC, a Colorado)
corporation; U.S. West)
Communications, Inc., a Colorado)
corporation; Verizon Communications,)
Inc., a New York corporation; GTE)
Mobility of San Diego Incorporated, a)
Delaware corporation; GTE Wireless)
San Diego LLC, a California Limited)
Liability Corporation; Sony Electronics)
Inc., a Delaware corporation; Cellular)
Telecommunications and Internet)
Association, a District of Columbia)
corporation; Cellular Carriers)
Association of California, a California)
corporation; and DOES 1 through 100,)
inclusive,)
)

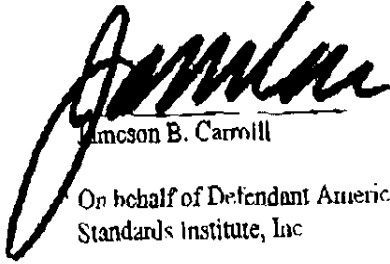
Defendants.

CONSENT TO REMOVAL

The undersigned defendants -- without waiving, and specifically reserving all defenses, objections, exceptions, and motions, including but not limited to lack of service, improper service, lack of personal jurisdiction, improper venue, and the arbitrability of these claims -- consents to, authorizes, and joins in the removal of the captioned action from the Superior Court of the State of California, County of San Diego to this Honorable Court.

[signature on next page]

Respectfully submitted,



Jameson B. Carroll

On behalf of Defendant American National
Standards Institute, Inc

OF COUNSEL
King & Spalding
191 Peachtree Street
Atlanta, Georgia 30303-1763

- 2 -

** TOTAL PAGE.04 **

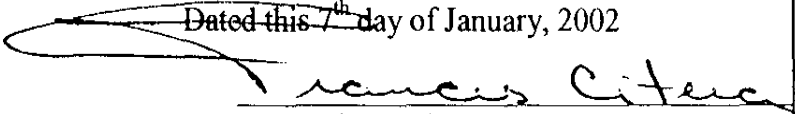
1 Francis A. Citera
2 Greenberg Traurig, P.C.
3 77 West Wacker Drive, Suite 2500
4 Chicago, IL 60601
5 Tel. (312) 456-8400
6 Attorneys for Defendant Sony Electronics Inc.

7
8 IN THE UNITED STATES DISTRICT COURT
9
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
11

12 GIBB BROWER and KIM BROWER,) Case No.: No.
13)
14 Plaintiffs,) CONSENT TO REMOVAL
15)
16 vs.)
17)
18 MOTOROLA, INC., a Delaware Corporation,)
19 et al.,)
20)
21 Defendants.)

22 Defendant Sony Electronics Inc., without waiving, and specifically reserving, all
23 defenses, objections, exceptions, and motions, including but not limited to lack of service,
24 improper service, lack of personal jurisdiction, and the arbitrability of these claims, consents to,
25 authorizes, and joins in the removal of the captioned action from the Superior Court of the State
of California, County of San Diego to this Honorable Court.

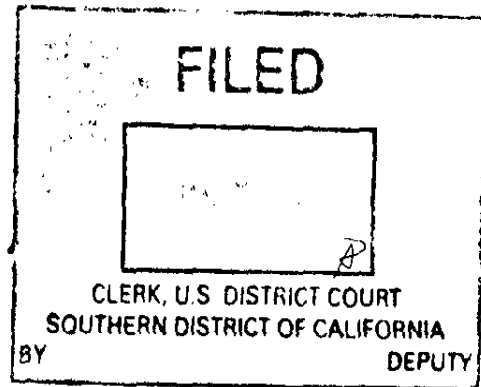
26 Dated this 7th day of January, 2002

27 
28 Francis A. Citera
29 Greenberg Traurig, P.C.
30 77 West Wacker Drive
31 Suite 250
32 Chicago, IL 60601
33 Tel. (312) 456-8400
34 Attorneys for Defendant Sony
35 Electronics Inc.

ORIGINAL

1 WRIGHT & L'ESTRANGE
 Robert C. Wright (051864)
 2 John H. L'Estrange (049594)
 701 B Street, Suite 1550
 3 San Diego, California 92101
 (619) 231-4844
 4 (619) 231-6710 (facsimile)

5 Attorneys for Defendant Motorola, Inc.



8 UNITED STATES DISTRICT COURT
 9 SOUTHERN DISTRICT OF CALIFORNIA

10 GIBB BROWER and KIM BROWER,

11 Plaintiffs,

12 vs.

13 MOTOROLA, INC., a Delaware corporation;
 14 U.S. WEST WIRELESS, LLC, a Colorado
 Corporation; U.S. WEST
 15 COMMUNICATIONS, INC., a Colorado
 corporation; VERIZON COMMUNICATIONS,
 16 INC., a New York corporation; GTE
 MOBILNET OF SAN DIEGO
 17 INCORPORATED, a Delaware corporation;
 GTE WIRELESS SAN DIEGO LLC, a
 18 California Limited Liability corporation; SONY
 ELECTRONICS INC., a Delaware corporation;
 19 CELLULAR TELECOMMUNICATIONS AND
 INTERNET ASSOCIATION, a District of
 20 Columbia corporation; CELLULAR
 CARRIERS ASSOCIATION OF CALIFORNIA,
 21 a California corporation and DOES 1 through
 100, inclusive,

22 Defendants.

Case No. 02 CV 0056 K (JFS)

CERTIFICATE OF SERVICE

24 I certify that I am over the age of 18 and not a party to the within action; I am employed in,
 25 or am a resident of, the County of San Diego, California, where the mailing occurs; my business
 26 address is 701 "B" Street, Suite 1550, San Diego, California 92101.

1 I further declare that I am readily familiar with the business' practice for collection and
2 processing of correspondence for mailing with the United States Postal Service; and that the
3 correspondence shall be deposited with the United States Postal Service this same day in the ordinary
4 course of business.

5 I caused to be served the following document(s):

- 6 1. **NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(b)**
- 7 2. **CERTIFICATE OF SERVICE OF NOTICE TO ADVERSE PARTY OF REMOVAL**
8 **OF ACTION TO FEDERAL DISTRICT COURT** attaching NOTICE TO ADVERSE
9 **PARTY OF REMOVAL OF ACTION TO FEDERAL DISTRICT COURT**
- 10 3. **CONSENT TO REMOVAL BY DEFENDANT GTE WIRELESS SAN DIEGO, LLC**
- 11 4. **CONSENT TO REMOVAL BY DEFENDANT AMERICAN NATIONAL**
12 **STANDARDS INSTITUTE, INC.**
- 13 5. **CONSENT TO REMOVAL BY DEFENDANTS U.S. WEST WIRELESS, LLC, AND**
14 **U.S. WEST COMMUNICATIONS, INC. N/K/A QWEST WIRELESS, LLC AND**
15 **QWEST CORPORATION**
- 16 6. **CONSENT TO REMOVAL BY DEFENDANT SONY ELECTRONICS INC.**
- 17 7. **CONSENT TO REMOVAL BY DEFENDANTS VERIZON COMMUNICATIONS**
18 **INC., "VERIZON WIRELESS," GTE CORPORATION, AND GTE MOBILNET OF**
19 **SAN DIEGO INCORPORATED**
- 20 8. **CONSENT TO REMOVAL BY DEFENDANT CELLULAR CARRIERS**
21 **ASSOCIATION OF CALIFORNIA**

22 by placing a copy of each document in a separate envelope addressed to each addressee, respectively,
23 as follows:

24 Carl Hilliard, Esq.
25 1246 Stratford Court
26 Del Mar, CA 92014

27 I then sealed each envelope and, with the postage thereon fully prepaid, I placed each for deposit in
28 the United States Postal Service, this same day, at my business address shown above, following
ordinary business practices.

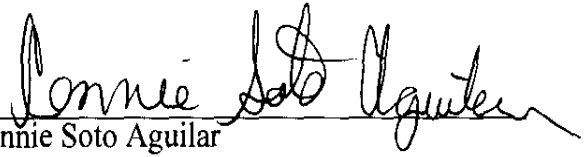
.....

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1 I declare under penalty of perjury that the foregoing is true and correct, and that I am
2 employed in the office of a member of the bar of this Court at whose direction this service was made.

3 Executed at San Diego, California, on January 9, 2002.

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7 Connie Soto Aguilar
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(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

GIBB BROWER and KIM BROWER

DEFENDANTS

MOTOROLA, INC., a Delaware corporation; U.S. WEST WIRELESS, LLC, a Colorado corporation, et al.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

(EXCEPT IN U.S. PLAINTIFF CASES)

San Diego

COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (IN U.S. PLAINTIFF CASES ONLY)

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY

DEPUTY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Carl Hillard, Esq.
1246 Stratford Court
Del Mar, CA 92014

ATTORNEYS (IF KNOWN)

Robert C. Wright
WRIGHT & L'ESTRANGE
701 "B" Street, Suite 1550
San Diego, CA 92101

'02 CV 0056 K (JFS)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)**

| | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Removal jurisdiction under 28 U.S.C. sections 1331 and 1441 (Federal Question)

P1-rc

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|--|---|---|---|--|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(c)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State 90 Other Statutory Actions |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions | | | |

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)
☐ 1 Original Proceeding ☒ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment
VII. REQUESTED IN COMPLAINT:
☒ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S) IF ANY (See Instructions):**

JUDGE

Docket Number

DATE January 9, 2002

SIGNATURE OF ATTORNEY OF RECORD

078751 \$150,000 BLD